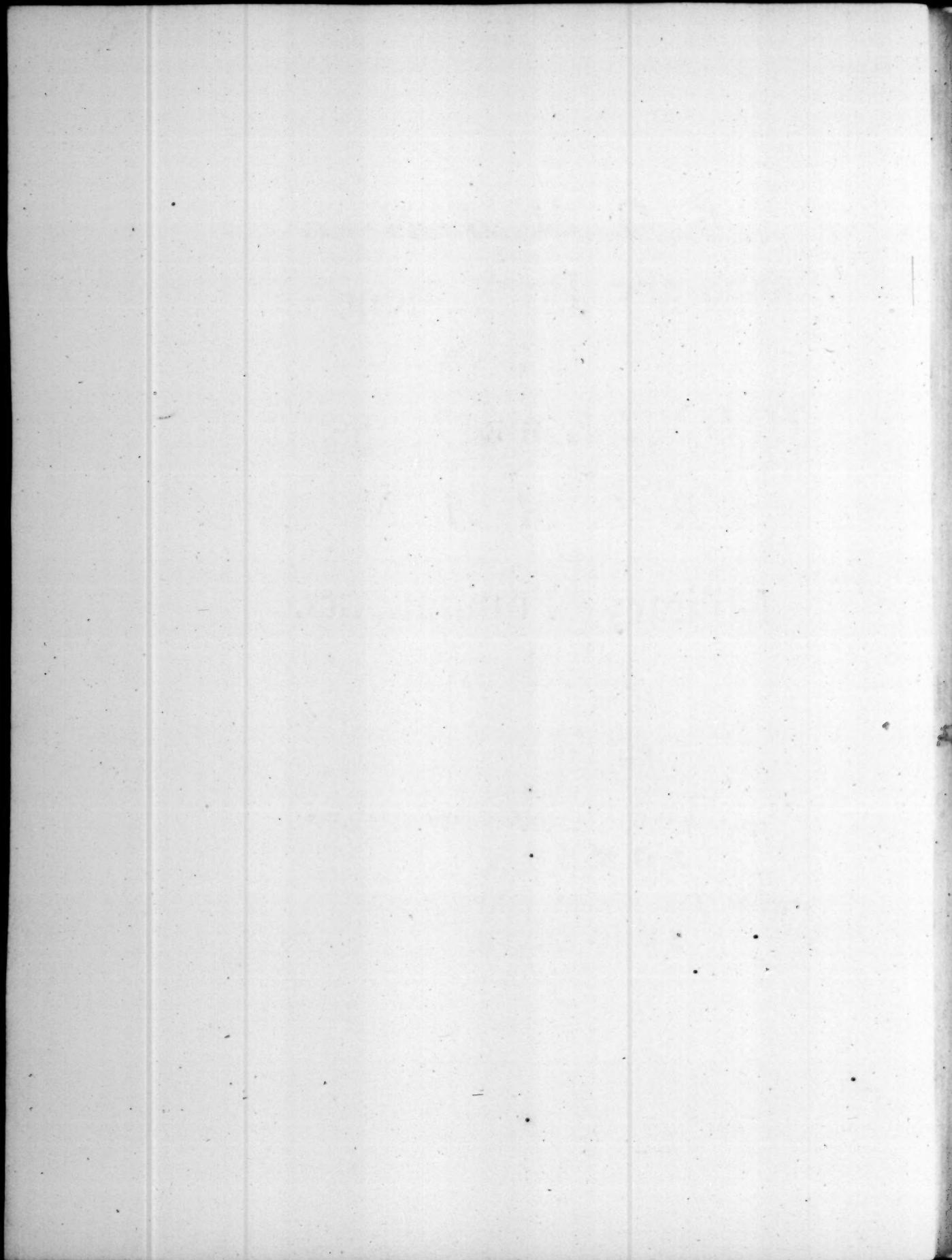


THE  
*R O M A N*  
Military Punishments.



THE  
ROMAN  
Military Punishments.

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BY  
JOHN BEAVER, Esq;

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*Terrent nisi timent. Lips. de M. R.*

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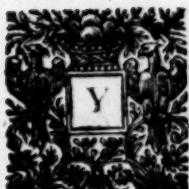


LONDON,  
FROM THE HAPPY REVOLUTION  
ANNO XXXVII.

\* 56-198



TO THE  
READER.

OU have here the First express Treatise of the *Roman Military Punishments*, that, perhaps, you ever saw, or heard of, in the *English Tongue*. A Subject, it must be confess, of more Curiosity than Use; yet such as hath often employ'd the Pens of several Great and Learned Men, to whom, I freely own my self indebted for the

ii      *To the Reader.*

the Thought of the undertaking, as well as for many Materials towards accomplishing this Design : And I hope, it will be no Disparagement to the Work, since that would be altogether as unreasonable, as to lessen the Merit of an *Architect*, because he is not the *Inventer* of the *Timber* and *Stone* out of which he is to raise his Building ; there will be something due to him for his Model and Contrivance, and for his Pains and Application, in finding out, and bringing together proper Materials for the Structure.

The Nature of the Employment in which I have the Honour to serve His *Majesty*, necessarily engag'd me to be acquainted with this Subject. And tho'  
the

*To the Reader.*      iii

the *Modern Punishments* used in Armies fell more immediately under my Consideration, after I had finish'd my Enquiries and Observations upon them, the Work seem'd imperfect, till I had look'd back into *Antiquity*, and seen what Punishments were in use in those remote Times, when *Military Discipline* is thought to have been in the highest Degree of Perfection. This regularly divided my Book into Two Parts; One treating of the *Roman*, the other of the *Modern Military Punishments*. The First I now send into the World, as a Man going into the Water, dips his Foot to feel what Reception he is like to meet with; by that Rule, resolving, either to publish the Second Part, or sit down contented with the

private

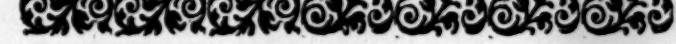
iv      *To the Reader.*

private Satisfaction of having by my Studies, rendred my self more able, worthily to discharge the Duties of my Office.

\*\*\*\*\*

THE

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### ERRATA.

## ERRATA.

PAGE 44. in Note, read *Mscrini*; p. 46. line 18. r.  
the *Liburni*. p. 47. in Notes, r. *Castrametatione*. p. 57.  
l. 7. r. *Determination*. p. 72. l. 2. for *thrown* *reposed*. p.  
74. l. 1. *dele* *their*. p. 102. l. 8. r. *infuse*. p. 119. in Notes,  
l. 1. for *qui* r. *quit*. p. 127. in Notes, r. *Novel* 116. p. 134.  
l. 13. r. *Otacilius*. p. 135. in Note †, r. *initio*. p. 150. l.  
14. r. *that* *Code*.

## AUTHORS quoted in this Book,

<i>Alexander ab Alexandro.</i>	<i>Lucanus.</i>
<i>Amm. Marcellinus.</i>	<i>Lyndenbrogius</i>
<i>Appianus.</i>	<i>Montfaulcon.</i>
<i>Budeus.</i>	<i>Menage.</i>
<i>Casaubonus,</i>	<i>Muretus.</i>
<i>Choulius.</i>	<i>Novel. Justinian.</i>
<i>Cicero.</i>	<i>Perizonius.</i>
<i>Codex Theodosianus.</i>	<i>Petronius.</i>
<i>Cod. Justinian.</i>	<i>Plutarchus.</i>
<i>Cotteraeus.</i>	<i>Plautus.</i>
<i>Cujacius.</i>	<i>Plinii Nat. Hist.</i>
<i>Cuperus.</i>	<i>Propertius.</i>
<i>Digest. Jur. Civil.</i>	<i>Puffendorf.</i>
<i>Dionysius Halicarnasseus.</i>	<i>Ricquius.</i>
<i>Eutropius.</i>	<i>Savill, Sir Henry.</i>
<i>Faber Semestrium.</i>	<i>Salmasius.</i>
<i>Festus.</i>	<i>Seneca.</i>
<i>Florus.</i>	<i>Sigonius.</i>
<i>Frontinus.</i>	<i>Sichtermannus.</i>
<i>Gellius.</i>	<i>Suidas.</i>
<i>Gothofredus.</i>	<i>Suetonius.</i>
<i>Grævius.</i>	<i>Schelius.</i>
<i>Hesiodus.</i>	<i>Schefferus.</i>
<i>Herodianus.</i>	<i>Spartianus.</i>
<i>Hirtius.</i>	<i>Stewechius.</i>
<i>Hubertus.</i>	<i>Tacitus.</i>
<i>Hugo.</i>	<i>Turner, Sir Charles.</i>
<i>Instit. Juris Civilis.</i>	<i>Turnebus.</i>
<i>Josephus.</i>	<i>Valerius Maximus.</i>
<i>Isidorus.</i>	<i>Valtrinus.</i>
<i>Julius Capitolinus.</i>	<i>Varro.</i>
<i>Justinus.</i>	<i>Vegetius.</i>
<i>Juvenalis.</i>	<i>Virgilius.</i>
<i>Lampridius.</i>	<i>Voet.</i>
<i>Lipsius.</i>	<i>Vopiscus.</i>
<i>Lvius.</i>	<i>Xenophon.</i>



W. Heywood, Junr. sculpsit.

## CHAP. I.



S Military Crimes are either *\* common* to all Men, or *proper* to such as embrace that Profession; so are Military Punishments. Not that the Peasant and Soldier falling into the

\* Militum delicta sive admissa, aut propria sunt, aut cum cæteris communia, unde & persecutio aut propria aut communis est. Proprium militare est delictum, quod quis ut Miles admittit. *Digest. lib. 49. Tit. 16. De Re Militari, Leg. 2.*

B

fame

## 2      *Of the Roman*

same Crime suffer alike : For the Soldier is generally corrected \* with greater Rigour and Severity ; as well because he is under a double Tie of Duty to the Government, whose Bread he eats, and in whose Defence he has solemnly engag'd, as that by the least Omission or Mistake, he may bring the whole Army, and consequently the Government into Danger of utter Ruin. † There is no Pardon, says *Vegetius*, for a Neglect, where the Safety of the State is in question. To which may be added, as another Reason for the Se-

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\* Rigidius autem Milites quam alii plerunque puniuntur, tum quod arctiori vinculo ad obedientiam illi sunt obligati, qui publicis aluntur stipendiis, tum quod iis ferocior ut plurimum natura. Vid. *Jobannis Voet. lib. sing. De Jure Militari, cap. 4 S. 5.*

† Siquidem nulla sit negligentiae venia, ubi de salute certatur. *Veget. lib. 3. cap. 5.*

verity

## *Military Punishments.* 3

verity of Military Discipline, the common, and, I doubt, too true Observation, \* that Soldiers are apt to assume a greater Liberty of Offending than others; as if entring into the Army let them loose from all Bonds of Human Society.

The *Roman* Military Punishments were either prescrib'd by express Laws; or Arbitrary, and depended entirely upon the Pleasure of the General, or Person that commanded the Army.

Among these, some were *Capital*, and reach'd either the † *Natural* or *Civil Life* of the Offender; others *not Capital*, as tending only to his *Reformation*.

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\* *Turner's Pallas Armata*, Book 2. Chap. 24.

† Intereunt autem homines vel maxima vel media, capitatis diminutione, aut morte. *Digest. lib. 17. Tit. 2. Pro Socio. Leg. 63. §. ult.*

## 4      Of the Roman

Of Capital Military Punishments, the Chief was *Verberatio, Beating.* This was of Two Kinds ; One call'd *Fustigatio,* the Other *Castigatio ;* the difference between them consisting in this, that the first was ever inflicted with *Sticks* and *Cudgels,* and generally ended in an ignominious Death ; the latter, with *Rods* or *Scourges,* being a Punishment of *Pain* and *In-famy,* but never extended to *Life* or *Limb :* Of which, more in another Place.

The *Fustigatio,* or, as it is by some call'd *Fustuarium,* was peculiar to \* Free-men, as the *Flagra* and *Flagella* were to Slaves ; and therefore the *Roman Poets* and *Historians* call them *Servilia*

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\* Non omnes fustibus cædi solent, sed hi duntaxat, qui Liberi sunt. *Digest. lib. 48. Tit. 19. De Panis. Leg. 28. §. 2.*

Ex quibus causis Liber fustibus cæditur, ex his Servus flagellis cædi. *Eodem, Leg. 10.*

*Justino* 1. 5. *Petron.* p. 88.

*Verbera,*

## Military Punishments. 5

*Verbera, Serviles Pœna* ; And *Juvenal* uses this Expression, *Ad flagra deducere*, to signify the bringing a Man to the Condition of a Slave. It is therefore difficult to assign a Reason, why several Learned Men, particularly † *Gothofredus* and † *Steweclius*, have, upon the Authority of \* *Suidas* and *Eutropius*, ascribed the Introduction of the *Fustuarium* among the *Romans* to *Tarquin the Proud*, especially since the Lexicographer in enumerating the Punishments of which *Tarquin* was the Author, makes no mention of the *Fustes*, but only *μεσητιας*, the *Flagella*; which was so different a Punishment from the *Fustuarium*, that it was never inflicted upon Freemen ; unless we can suppose they

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† *Ad Leg. 7. Digest. de Pœnis.* † *Ad Veget. lib. 1. cap. 26.*

\* *Vide Suidam in vce Eutrop. Juven. Sat. 10. V. 109.*  
E *Eutropium, lib. 11.*

## 6      *Of the Roman*

did not perfectly understand the *Greek Word*, or knew not how to distinguish between the *Fustes* and *Flagella*, in the Punishment of the *Fustuarium*. Besides, there is not one Word of the *Fustes*, or of *Tarquin's* introducing them, in the Place cited out of *Eutropius*. They might, no doubt, have produc'd an Author more to their purpose: For \* *Isidorus* says, besides *Goals*, *Racks*, *working in the Mines*, and *Banishment*, *Tarquin* invented the Punishment of the *Fustes*, he means, amongst the *Romans*; for, no question, the Punishing with *Clubs* and *Staves* was long before practis'd by other Nations, who made use of them in War before the Art of working Iron was known; and hence, even after Iron became common, *Clubs* and *Staves* conti-

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\* *Lib. 5. c. 27.*

## Military Punishments. 7

nu'd to be used in certain Punishments.

They likewise made a Distinction between the *Fustigatio* or *Fustuarium*, and \* *Fustium admonitio*; the first being proper to Soldiers, and, as is before observed, *Capital*; the latter a *Corporal* Punishment common to Soldier and Peasant, and inflicted only to warn them from committing the same Fault again: From whence it was called *παγίδη ἀνιμαδερσία* *Animadversio*; whereas such as underwent the *Fustuarium*, were generally beaten to death; and tho' sometimes it hapned they escap'd with Life out of the Camp, yet it was of little Advantage to them, the † Laws

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\* *Veluti fustium admonitio.* *Digest.* lib. 48. Tit. 19.  
*De Panis, Leg.* 7.

† *Ac si qui evasissent, nec siquidem servari poterant, quippe, quibus neque in Patriam redire liceret, neque à propinquis domum recipi possent.* *Polyb.* lib. 6. cap. 35.

forbidding

## 8      *Of the Roman*

forbidding their Return home, or their Friends or Relations to receive or assist them ; † so that it ended, at the best, in a kind of perpetual Banishment. It is therefore surprizing, that \* *Lyndenbrogius* should compare the *Fustigatio* of the Antients to our running the † *Gat-loupe* ; since in his Description of the *Fustuarium*, he says, Every one in the Camp, what with Staves, Swords or Stones, help'd to dispatch the miserable Offender : Which is known to be quite otherwise in our Modern Punishment.

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† Quamobrem qui semel in eam calamitatem incidunt, planissimè pereunt. *Polyb. loc. cit.*

\* *Lyndenbrogius ad Ammianum, Lib. 29. cap. 5. Edit. Gronov. p. 623.* Durch die Spicke lauffen.

† From *Gas* or *Get*, which signifies a *Street* or *Way*, and *Laufen* or *Loupen* to *Run*.

*levior,*

## Military Punishments. 9

It is also apparent from its ending in Death, that not *this*, but the *former* is that Species of the *Fustigatio*, which by the Learned is said to be *Flagellatione levior*, lighter than *Whipping*. On the other hand, Whipping was far more grievous than their *Admonitio*, as being inflicted on the bare Back of the Offender: Whence † *Juvenal*,

----- *Rubet ille flagello.*

Whereas such as were beaten with the *Fustes* for *Correction* or *Amendment*, had generally their Cloaths on, tho' sometimes they were stripp'd \* naked; and if the Fault was of a nature that deserv'd it, they were mark'd with † *Infamy*.

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‡ *Sat. 6. V. 48.*

\* *Vestimentis quoque detractis. Gell. lib. 10. cap. 3.*  
*L. 22. Dig. De his qui notantur infamia.*

† *Ictus fustium infamiam non importat, sed Causa;*  
*propter quam id pati meruit, si ea fuit quæ infamiam*  
*damnato irrogat. Dig. lib. 3. Tit. De his qui notantur in-*  
*famia. Leg. 22.*

C

And

## 10      *Of the Roman*

And it is to be observ'd, that the *Fusluarium* was never given by the hands of the *Common Executioner*, who was as infamous in those Days, as at present ; and by the \* *Censorian Laws* not allow'd to dwell in the City. But the † *Tribune* or Colonel having first touch'd the Criminal with his *Baton* or Stick, he was thereupon deliver'd up to the Soldiers, and commonly, before he could run through the Camp, put to death. This *Lipsius* exclaims at as a Piece of *Inhumanity* ; because the Offender was executed by his *Comrades* ; as if it were not more honourable to die by

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\* Censoriis Legibus non Foro modò, sed & urbis domicilio exclusi fuerint carnifices. *Sichtermannis Dissert. De Pénis Milit.* cap. 2.

† Accepto Fuste Tribunus, vix tantum attingebat damnatum, quod ubi factum erat omnes qui in castris erant cædentes fustibus lapidibusque plerosque in ipsis castris conficiebant. *Polyb. lib. 6. cap. 35.*

their

## *Military Punishments.* 11

their Hands, than those of the Common Hangman. Both the *Antients* and *Moderns* have ever esteem'd some sorts of Punishments more *Infamous* than others ; which Opinion is grounded upon the Circumstances that attend them, especially, the *Hand* employ'd in the Execution ; and therefore, when *Æneas* had given *Lausus* his Mortal Wound, he comforted his dying Enemy with these Words :

*Hoc tamen infelix miseram solabere mortem  
Æneæ magni dextrâ cadis.*

[Virg. *Æn.* lib. 10. V. 829.]

*This Comfort have in thy sad Funeral,  
That thou by Great Æneas Hand didst fall.*

In succeeding Ages *Swords* were made use of in the place of *Sticks* or *Cudgels*, in much the same kind of Punishment,

## 12 Of the Roman

as it is describ'd by <sup>||</sup> *Tacitus*; and *Polybius* says, they used *Stones* on these Occasions; Which seems to have led *Steweebius* into the Mistake, that *Stoning* was a distinct *Roman* Military Punishment; but the Authority he goes upon is call'd in question by <sup>\*</sup> *Siebterman* and <sup>†</sup> *Sir Charles Turner*, who think the Instances of stoning to Death, which we meet with in the <sup>old</sup> *Roman* Armies, are to be imputed to the Violence of seditious Persons, and no Argument to prove it was a regular Military Punishment.

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<sup>||</sup> *Stabant pro concione Legiones districtis gladiis, Reus in suggestu per Tribunum ostendebatur, si nocentem adclamaverant, præceps datus trucidabatur. Tacit. Annal. 1. cap. 44. Edit. Amstel. 1701.*

<sup>\*</sup> *Dissert. De Pænis Milit. cap. 2.*

<sup>†</sup> *Pallas Armata, Chap. 23.*

<sup>†</sup> *Exercitus Posthumum Imperatorem inficiantem quas promiserat prædas facta in castris seditione lapidavit. Florus, lib. 1. c. 22. Liv. lib. 4.*

*Valens coercere seditionem cæptabat, ipsum invadunt saxa jacunt. Tacit. Hist. lib. 2. cap. 29.*

CHAP.

CHAP. II.

THE Crimes punish'd by the *Fusarium*, were \* Negligence in going the Rounds, Sleeping on the Watch, Theft, Bearing False Witness, Sodomy, and all other Faults, of which any Man had been thrice convicted,

The Consequence of not performing the Duty of a Sentinel or Watch with the utmost Care and Alertness, is too obvious to want any Enlargement on that Subject. The whole *Carthaginian*

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\* Si nihil tale factum reddit in circitorem culpa, statimque advocato consilio, à Tribuno causa cognoscitur, & si damnatus fuerit *Fusarium* subit. *Just. Lips. in Polyb. lib. 5. De Milit. Roman. Dial. 18.*

*Fusfe* autem percutitur & is qui furto aliquid abstulit à castris, & qui falsum testimonium dixit, & qui flore ætatis corpore suo deprehenditur abusus. Itemque qui ter ob eandem culpam mulctatus fuerit. *Lips. in Polyb. lib. 5. De Milit. Rom. Dial. 18.*

Army

## 14 *Of the Roman*

Army in *Spain* was surpriz'd and routed by a Handful of Men, under the Command of *L. Marcius*, and the *Capitol* it self narrowly escaped being seiz'd by the *Gauls*, for want of Vigilance in the Out-Guards, that were placed to secure, and give the Alarm to those within. \* *Polybius* has written copiously upon the excellent Method used by the *Romans* in going the Rounds, giving the *Word*, and setting the Watch. The Reader may also consult † *Voet De Jure Militari*; wherein he will find many Examples of the Severity of the *Antients* upon Offenders against this Branch of Military Discipline.

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\* *Polyb. liq. 6.*

† *Voet. cap. 4. n. 25.*

Nor

## *Military Punishments. 15*

Nor were the *Romans* less careful in providing for the Security and Preservation of every Man's Property within the Camp. To this end, *Theft* was punish'd with the utmost rigour, not only as a Crime destructive of Society, but as a Sin against Religion; every one belonging to the Army, upon his first Encamping, being obliged to take the *\* Sacramentum Castrense, or Camp-Oath;*

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\* IN EXERCITU DECEMQUE MILLIA PASSUM PROPE FURTUM NON FACIES DOLO MALO SOLUS, NEQUE CUM PLURIBUS PLURIS NUMMI ARGENTEI IN DIES SINGULOS EXTRAQUE HASTAM, HASTILE, LIGNA, PABULUM, UTREM, FOLLEM, FACULAM, SI QUID IBI INVENERIS QUOD PLURIS NUMMI ARGENTEI ERIT, UTI TU AD COSS. SIVE AD QUEM EORUM ALTER JUSSERIT PERFERAS, AUT PROFITEBERE IN TRIDUO PROXIMO QUICQUID INVENERIS SUSTULERIS VE DOLO MALO AUT DOMINO SUO CUJUM ID CENSEBIS ESSE REDDES UTI QUOD RECTE FACTUM ESSE VOLES. *Aul. Gell. Notes Atticæ, lib. 16. cap. 4.*

See the Notes of R. H. Schelius upon this Oath, and Grævius's Thesaur. Tom. x. p. 1177. & seqq.

the

## 16 Of the Roman

the Purport of which was, *That he should not steal or pilfer in or about the Camp ; and if he happen'd to find any thing, he was within Three Days to carry it to the General, or some other Chief Officer, or to restore it himself to the Person, whom he believed it belonged to.* And tho' \* *Polybius* says, this Punishment was inflicted only for *Theft committed in the Camp, or within Ten thousand Paces of it* ; yet he seems to think, it was also intended to put a Check upon such as were addicted to *Maroding and Plundering the Countrey on the March* ; who, no doubt, were as severely handled, as those that were convicted of *Theft* within the Limits mentioned in the *Oath* : For besides

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\* *Polyb. lib. 10.*

what

## Military Punishments. 17

what is transmitted to us of the Emperours \* *Aurelian* and *Pescennius Niger*, who in the most dissolute times did strict Justice upon Soldiers convicted of this Crime, we have abundance of Examples in History, that shew it did not want due Punishment in earlier Ages. *Sertorius* beheaded a whole Legion for *Pillaging and Wasting the Countrey*. † *Tiberius* order'd a Soldier to be put to death for stealing a *Peacock*: But this, indeed, is by *Suetonius*, who gives the account of it, plac'd among his Acts of Cruelty, as bearing no proportion to the quality of the Offence.

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\* *Pescennium Nigrum ob unius Gallinacei direptionem decem commanipulones qui raptum ab uno comedebant, securi percuti jussisse. Spartanus in Pescen.*

† *In Vita Tiberii, cap. 60.*

D

In

18      *Of the Roman*

In every Nation and Age, an *Oath* has been of the greatest weight, and most sacred Authority ; and it was a receiv'd Opinion among the Heathens, that some very \* grievous Punishment would fall upon Persons forsworn ; but because Divine Vengeance did not always immediately overtake the Guilty, and the Fear of it became by that means insufficient to suppress the enormous Sin of *Perjury*, Laws, with heavy Penalties were invented for that purpose ; among which was the *Fustuarium* for those *Soldiers*, that should *impiously bear false witness upon Oath* against another.

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\* *Deorum injurias diis curæ.* *Tacit. Anpal. 1. cap. 73.*  
*From whence dire Plagues, and dreadful Slaughters come*  
*On base and perjur'd Wretches.* *Hesiod.*

*Nullum enim vinculum ad adstringendam fidem jure-*  
*jurando maiores arctius esse voluerunt.* *Cicero de Offic.*  
*lib. 3. cap. 31.*

It

## *Military Punishments.* 19

It will seem no Wonder, that the *Romans* were so rigorous and exact in punishing all Unnatural Abuses of the Body, if we consider the vast Number of Youths, and those, as \* *Lipsius* says, *in ipso vigore formæ, In the very Prime of their Beauty*, assembl'd in their Armies, and, as some affirm, the strict Prohibition that no Woman should be admitted into their Camps.

When a young Gentleman, who had been sollicited by his Officer to prostitute his Body, stabb'd him, with this Expression, *Virum me scito*; *Marius*, the *Tribune*, not only acquitted, but commended him for his Detestation and Resentment of so foul and unmanly an Attempt. But it was not

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\* *Dial.* 18. *lib.* 5. *De Militiâ Romana.*

20 *Of the Roman*

only forbidding Women the Camp, that made the *Roman* Soldiery so prone to this Beastly Vice ; they were not allow'd to have \* Wives so long as they continu'd in the Service ; that is, if they were single when they first entred ; till the Emperor † *Septimius Severus* repeal'd that *Law*, and suffer'd them to marry. For tho' by the *Municipal Laws* of *Rome* all Men were encourag'd to Marry, and Rewards given to those that had a certain Number of Children, and a Penalty laid upon *Celibacy* ; yet the *Camp* was to be under a quite different Regulation, lest the too frequent Use and soft Conversa-

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\* *Zach. Hubertus, Dissert. ad l. 63. de Rit. Nupt. c. 8.*

† *Primus autem ut uxorem domi milites Romani haberent Imperator, Severus permisit, ut auctor est, Lib. 3. Herodianus. Steweclius ad lib. 1. Vegetii, cap. 3.*

tion

## *Military Punishments.* 21

tion of Women should enervate the Soldier, and render him less capable of his Military Duties. And 'tis evident from what \* *Tacitus* says of *Tiberius*'s sending *Drusus* early into the Army, that it was *then* look'd upon as a Place of more † *Vertue*, and *stricter Morals*, than the City. Yet the Learned are by no means agreed in this Particular; some contending, that this Rule or Custom of not suffering Women in the *Roman Camps* was Religiously observed; others, that notwithstanding their utmost Precaution, the Ladies of Pleasure did steal into them, and were entertained there. To support the first Opinion,

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\* *Juvenem urbano luxu lascivientem melies in Castris haberi.* *Tacit. Annal. 2. cap. 44.*

† *Castra dicta, quasi casta, quod castraretur in iis libido.* *Isidorus.*

*Lipsius*

22      *Of the Roman*

*Lipfius* produces the Authority of *Propertius* :

*Romanis utinam patuissent Castra puellis !*

But \* *Sichterman* makes it plain, this Verse does not relate either to Mistresses or Wives, but to Women in general, who, by reason of their Sex, were not allow'd to bear Arms. And because *Lipfius* foresaw, it might be objected, that *Scipio* in his Reformation of Military Discipline, discharged the Camp of Two Thousand loose Women ; from whence it might be inferr'd, That Married Women were still kept in the Camp, and that Strumpets had been permitted to be in it before *Scipio*'s Re-

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\* *Dissert. de Panis Milit. cap. 3.*

formation ;

## Military Punishments 23

formation ; he asserts, that the *Latin* Word *Scorta* in that place is not taken for *Lewd Women*, but *Viri mulieriosi* ; and it cannot be deny'd, but that it is sometimes used in a Masculine Signification ; yet if it be consider'd, that \* *Lipsius* himself says, this Crime was Capital in the *Roman Army*, how can it be imagined, that *Scipio*, whose Intention was to restore Military Discipline, and purge the Camp of those Vices that had crept into it through the Indolence of former Commanders, could be satisfied with the bare turning them out of the Army, when they had every one incurred the Penalty of Death by their unnatural Practices ? But this Difficulty is clear'd by † *Appian* ; who

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\* *Lib. 5. De Militiâ Româna, Dial. 18.*

† *De Bellis Hispani.*

speaking

## 24 Of the Roman

speaking of *Scipio* on this occasion, uses these Words : \* Ἐλθὼν δὲ ἐμπόρους πάντας ἐξέλευσεν οὐ ΕΤΑΙΡΑΣ, οὐ μάντας, οὐ δυταῖς. Upon his first coming to the Camp, he sent away all the Sutlers, Whores, Conjurers and Priests. Now ETAIPAI is no where to be found in the Sense *Lipsius* applies to the Word *Scorta*. Besides, he tells us in the same † Book, that a lewd Woman was found in Carnal Act in the ‡ principal Street of the Camp ; which was accounted Sacred, because their Altars were erected in it. Nor does *Tacitus*, from whence he has the Story, complain, that a Woman was found in the Camp ; but that she

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\* Simul atque in Castra venit, mercatores omnes, SCORTA, Ariolos, sacrificosque expulit.

† *Lipsius*, Lib. 5. Dial. 4.

‡ In ipsis principiis stuprum ausa. *Tacit. Hist. Lib. 1. cap. 48.*

had

## *Military Punishments.* 25

had profaned so \* *Sacred* a Place. If therefore no Woman had been permitted to be in the *Roman* Camp, how could that Place have been polluted in the manner mention'd by the Historian? But *Lipsius* could not be ignorant, that the Empress *Agrippina*, *Nero*'s Mother, honour'd the Place of her Birth on the Banks of the *Rhine*, with a Colony of *Romans*, which in time grew to be the Famous City of *Cologne*. Now she could not have been born there, if her Mother † *Agrippina* had not been allow'd to have staid in the *Roman* Camp with her Husband *Germanicus*. So that

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\* *Sacra & casta principia habita fuisse in Religione.*  
*Lipf. lib. 5. Dial. 4.*

† *Sed Agrippina, quo vim suam, sociis quoque nationibus ostentaret, in oppidum *Ubiorum*, in quo genita erat, veteranos, Coloniamque deduci imperat, cui nomen inditum ex vocabulo ipsius.* *Tacit. Annal. 12. §. 27.*

E if

## 26 Of the Roman

if there was any Law to forbid Women the Camp, 'tis plain, from the Instances before mentioned, it did not extend to *Officers*, nor was very strictly observed by the *common Soldiers*.

The next Crime which fell under the Discipline of the *Fusarium*, was *Stubborness*, or an obstinate Perseverance in doing ill. Some allowance is to be made to Beginners, and such as are \* ignorant of Military Discipline; but old incorrigible Offenders, that are hardened in Wickedness, and act in contempt of the Laws, ought to suffer without Mercy: Wherefore the *Romans* pu-

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\* Sed tyronibus parcendum est, qui si iterato hoc admiserint pena competenti adficiuntur. *Digest. lib. 59. Tit. 16. De Re Militari. Leg. 3. §. 9.*

Sed & ignorantia adhuc Disciplinam Tyroni ignoscitur. *Eod. Leg. 4. §. 15.*

nish'd

## Military Punishments. 27

nish'd those that had been <sup>\*</sup> iibrice convicted and fined, *capitally*; Not so much for the simple nature of the Fault, † as the Uncertainty to what pitch of Extravagancy their Evil Disposition might lead them; and because Men by a Frequency in doing ill, contract such a Familiarity with Vice, as they will hardly ever be able to renounce. Besides, the Law provides, that *all Degrees of † Contumacy in a Soldier, shall be punish'd with Death.*

<sup>\*</sup> ο τρις περι της αυτης αιτιας ζηνεσις. Polyb. lib. 6.

† Quod talem pravo ingenio censemant & factum ad peccandum, & quod quasi per contemptum ludibriumque Legis peccaret. Lips. De Milit. Rom. lib. 5. Dial. 18.

‡ Contumacia omnis adversus Ducem vel Præsidem militis capite punienda est. Digest. lib. 49. Tit. 16. De Re Milit. Leg. 6. §. 2.

## C H A P. III.

**T**HE *Crimes* treated of in the foregoing Chapter are *common* to all, and Capitally punished, as well in such as do not belong to the Army, as those that are in it, tho' in a different manner ; that is, in the Soldier by the *Fustuarium*. Let us now see what were properly *Military Crimes*, and *capitally* punished in the *Roman Armies*. *Polybius* mentions three : Ἐὰν τίνες φευδόνται αὐτοῖς αὐτρα-  
γαθεῖσι επαγγέλλωσι τοῖς κυλιάρχοις ἐνεκεν τὰ τίματα  
λαβεῖν. If any falsely reported a brave Action of themselves to their Officers, with a Design of obtaining Honour or Reward for the same. Όμοιος εἴναι τίνες εἰς ἐφεδρείαν  
παρθέντες φόβος χάρειν λίπωσι τὸν σολεῖτα τὸν. If any being placed Centinels or Guards, deserted

## Military Punishments. 29

deserted their Posts through Fear. Ἐάν  
τις απόρριψε τὸν τροχὸν ἢ πλάκαντας αὐτὸν τὸν κανθάρον  
ἀλλὰ πέσει. If any one through Fear cast  
away any part of his Armour in time  
of Danger. These, he says, are Crimes  
which the Romans imputed to Cowardice  
and ill Conduct.

I have already shewn, it was Ca-  
pital in a Soldier to Bear false-witness ;  
which is to be distinguish'd from this  
Crime, that having respect to Religi-  
on, this relating only to the foolish  
Boasting of vain-glorious Men. The  
Reason why the Romans made this Of-  
fence Capital, was, because they pro-  
posed, and gave great Rewards to such  
as signalized themselves in time of  
Action. *Lipsius* relates from *Livy*, a  
warm Dispute between Two Brave  
Officers, who should have the Reward  
promis'd

30 *Of the Roman*

promis'd by *Scipio* to the Person who first mounted the Walls of \* *New Carthage* ; which, for the greater satisfaction of the Curious, I have set down at large in the Margin.

*The leaving or deserting a Post or Station, was a Capital Offence by the*

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\* *Exemplum illustre in Livio, cuius hic sensus si non verba. Scipio Carthaginem Novam cæperat sua fortuna pariter & militum virtute, sed et pro Tribunal, ut mos, præmia cuiusque operæ daturus. Coronam muralem proposituit ei qui Primus murum ascendisset. Duo professi sunt, Q. Trebellius Centurio, & Sex. Digitius Socius Navalis. Magno certamine Res gerebatur, cum sui cuique corporis factores & suffragatores aggregarentur. Scipio, ut litem decideret, tres recuperatores dedit, qui testibus auditis cognoscerent statuerentque. Id verò non remedium sed augmentum motus fuit. Stabant utrinque per omnes Deos parati jurare magis quæ malent quam quæ scirent vera esse, per signa, per aquilas, & per quicquid esset Religionis. Lælius ille sapiens mali exempli rem censens, & non longè à seditione, ad Scipionem venit, prospicere monuit & temperare: Ille igitur pro Tribunal sic pronunciat: Se satis compertum habere Q. Trebellium & Sex. Digitium pariter in murum ascendisse, seque eos ambos virtutis causâ coronis muralibus donare. Lips. de Milit. Rom. lib. 5. Dial. 18.*

*Roman*

## Military Punishments. 31

Roman Discipline : But *Polybius* confines it to those only that did it *λαθόσον, thro'* Fear, for which *Lipsius* applauds him, perhaps, without any great reason : For *Suidas* upon this same Passage, observes, that the Roman Law, condemning the Soldier to die, who deserts his Station, \* *causā quācunque*, upon any account whatever, is too severe ; he makes no mention of Fear, but says, *causā quācunque*, without exception. And so † *Suetonius* speaks of *Augustus* in general Terms, *He condemned the Centurions and Subalterns who deserted their Posts, to suffer capitally.* But, says *Lipsius*, what if an Officer or Centinel be driven from his Post by

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\* Et severa in eo Lex est Romanorum ut moriatur qui causā quācunque excesserit. *Suidas Lipsio interprete, in M. R. lib. 5. Dial. 18.*

† *In Vita Augusti, cap. 24.*

a supe-

32 *Of the Roman*

a superior Force? \* It is but reasonable in that case to excuse him; and therefore the Restriction *ἀλλοτρία* was rightly added by *Polybius*, as if deserting or quitting a Post for *any other Cause* was not a Capital Offence; the contrary of which is evident from the Testimony of the Authors above cited: And indeed, if we consider its Nature, how could it be otherwise? For where, I pray, is the difference, as to the ill consequence, whether a Soldier leaves his Post *for fear of losing his Life*, or *to go to his Mistress*, if in the mean time the Enemy gets possession of it? Nor will, what *Lipsius* says in behalf of him that is driven from his Post

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\* Quid enim si impetus hostilis pepulit & vis violenta? Omnis ratio est ignosci. *Lipf. lib. 5. Dial. 18. De Milit. Rom.*

by

## Military Punishments. 33

by a superior Force, be allow'd as a good Excuse, if it be consider'd, that it was a *Roman Military Maxim*, \* *Either to conquer or die*; because they were sure to be punished with death, if they suffer'd themselves to be overcome. But it may be said, Why then did *Polybius* add these Words? To this it is answer'd, That it is not pretended they are superfluous; but only that by this Restriction, *through Fear*, he did not intend to signify, that the Crime of *deserting a Post* was in no other case *Capital*: For 'tis plain, these Words, φόβος χάστη, and οὐδὲ φόβος, relate to the Distinction he makes just before, of

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\* Suis militibus Legem olim latam fuisse, ut aut vin-  
cerent pugnando, aut morerentur: quippe olim viam  
nullam salutis aliam viatis superesse. *Polyb. Lipsio inter-  
prete in fine, lib. 6.*

F

Crimes

*Crimes* that are common to all Men, and such as are to be imputed to *αρνεσίαν* & *τρελωτικήν αγχύτων*, the Cowardice and ill Conduct of a Soldier, both which are notoriously evident in the Man that leaves his Post for Fear; but not in him that is forced to retreat by an over-powerful Charge of the Enemy, which, however, in strictness, is punishable with Death, tho' not so infamous as the other.

The same Argument holds good in the following Crime of a Soldier's throwing away any part of his Arms *in time of danger, thro' Fear.* Here again, *Lipfius* distinguishes, and makes this Offence *Capital*, \* under a double Restriction;

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\* Cum dupli restrictione, *si in acie, si per metum.*  
*Lipf. De Milit. Rom. lib. 5. Dial. 18.*

that

## Military Punishments. 35

that is, if it were done *in time of danger, and thro' Fear*; both which, as I said before, relate to the Distinction above-mentioned: For *Modestinus* lays down the Law in general Terms, that <sup>\*</sup> *Whoever loses or alienates his Arms, is to be punished with death.* And *Paulus*, another great Lawyer, says plainly, <sup>†</sup> *The Crime of alienating, or selling of Arms, is equal to that of Desertion:* Not a word of *Action, Danger or Fear* by either of these. From whence we may gather, that altho' *Polybius* makes it Capital for a Soldier to throw away any part of his Arms, *thro' Fear, and in time of danger*, yet 'tis not from

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\* Miles qui in bello arma amisit vel alienavit, capite punitur humanè militiam mutat. *Digest. lib. 49. Tit. 16. De Re Milit. Leg. 3. §. 13.*

† Arma alienasse grave crimen est, & ea culpa desertioni exæquatur. *Dig. eod. Leg. 24. §. 1.*

36 *Of the Roman*

thence to be inferr'd, that doing it at any other time, or for any other Cause, was not punishable in the same degree. This is plainly made out, by what *Valerius Maximus* relates from *Plutarch* of *Cæsius Scæva*, a Common Soldier, in *Julius Cæsar's* Expedition against this Island, who, with four of his Companions, having taken possession of a Rock near the Shoar, after they had forsaken him, maintain'd his Station for a long time against a great Number of the Enemy: But being at length run thro' the Thigh, and having lost his Head-piece, and receiv'd several Wounds in his Face, he threw himself into the Water, leaving his Shield behind him, and so swam to the Shoar, where seeing the Emperour, he immediately fell at his Feet, and ask'd Pardon for the

## *Military Punishments.* 37

the Loss of his Arms. \* *A Great Example*, says my Author, *of Bravery, but a far greater of the Observance of Military Discipline*; according to which, rememb'ring that he was liable to suffer death, he took care to fly immediately to the Emperour for relief against the Severity of the Law. Which Story being touch'd upon by *Lipsius*, in his Notes upon *Polybius*, it is surprising he should not have observ'd the Penalty of losing or quitting Arms was not to be confin'd to the Case of *Fear*; since nothing could be so remote from it, as this Brave *Roman's* Behaviour; and yet he did not think himself out of danger, till the Emperour had

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\* Magnus prælio, sed major disciplinæ militaris memoria. *Valer. Max. lib. 3. cap. 2.*

approved

38    *Of the Roman  
approved of his Conduct, and pardoned  
him.*

So much for the Military Crimes sub-  
ject to the *Fustuarium*, according to  
*Polybius*. There were several others also  
punishable after the same manner, as  
may be gather'd from *Justinian's* \* Laws,  
† *Cicero*, † *Livy*, and ‡ *Lampridius* ;  
which last, in his Life of the Emperour  
*Alexander Severus*, reports, that if any  
Officer or Soldier on the March devia-  
ted and went into the Possessions of

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\* Qui agmen excessit ex causâ, vel fustibus cæditur,  
vel mutare militiam soler. *Digest. lib. 49. Tit. 16. De  
Re Milit. Leg. 5. §. 16.*

† Nam si ille Consul (Antonius) Fustuarium merue-  
runt Legiones quæ Consulem reliquerunt. *Cic. Philip. 3.*

‡ Fustuarium meretur, qui signa relinquit, aut præsidio  
decedit. *Liv. lib. 5.*

|| *Cap. 51.*

his

## *Military Punishments.* 39

his Subjects, he was, according to his Condition, either punished with the *Fustuarium* in the Emperour's Presence, *whipt with Rods*, or *condemn'd*. Where we are transiently to observe, that the Word *Condemnatio* signifies a *pecuniary Mult* ; being often, as the Commentators and Expositors of the Law affirm, \* us'd absolutely in that sense. *Homicide* was also punished with the *Fustuarium*, as we learn from † *Hirtius*, who mentions a Soldier that underwent it for killing his Brother. It would be easie, were it necessary, to produce many more Examples of this nature : But let these suffice concerning the *Fustuarium*.

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\* *Cod. Theod. Leg. 11. De Milit. Veste. Leg. eod. Ne quis in Palat. &c.*

Vide *Gotbofr. ad Leg. 12. Cod. Theod. De Re Milit.*

† Miles qui fratrem suum in Castris jugulabat, intercepitus est à nostris, & fuste percussum. *Hirt. cap. 27.*

CHAP.



## C H A P. IV.

THE next *Roman Military Punishment* that comes under consideration, is *Decimation*, so call'd, from every *Tenth Man's* suffering death : But some will not allow *Decimation* to be a Punishment ; because, say they, it is only a preparatory \* Step or Means to come to it,

\* *Faber Semestrium. lib. 1. cap. 28.*

and

## *Military Punishments.* 41

and not the Punishment it self ; yet, methinks, we may give it that Name properly enough, since every *Tenth Man* being executed, the rest were condemned to live upon *Barley* instead of *Wheat*. The manner of it is thus described by \* *Polybius* : *If at any time it happen'd that whole Companies, press'd by the Enemy, gave ground, or turned their Backs, the Practice of the Romans was not to put them all immediately to death ; but they found out an Expedient both profitable and terrible ; For the Tribune calling the Legion together, and producing those which had been faulty, first gave them a sharp Reprimand, and then out of the Offenders he chose by Lot sometimes Five, sometimes Eight, sometimes Twenty (al-*

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\* *Polyb. lib. 6. cap. 36.*

42      *Of the Roman*

ways having an Eye to the Number, and aiming as near as he could, to take every Tenth Man,) and those on whom the Lot fell, were beaten to death with Clubs without Remission. The Rest were condemned to have their Allowance in Barley instead of Wheat, and to quarter without the Intrenchment of the Camp. Thus the Danger of the Fatal Lot hanging equally over every Man's head, and no one knowing where it would fall, tho' all were certain to be reduced to *Barley Bread*, every one was struck with Terror and Apprehension, and a moderate Atonement made by the Death of a few, for the general Guilt. Here you have the Occasion explained, and Manner of inflicting this Punishment : To all which I shall speak more particularly anon.

Tho'

## *Military Punishments* 43

Tho' \* *Galba*, upon his Entry into *Rome* as Emperour, commanded every Tenth Man who had opposed him, but afterwards submitted, and were receiv'd into his Protection, to be put to death, it was ever look'd upon as an unlawful and tyrannical Action, and made use of as such by *Otho*, to alienate the Peoples Minds, when he began his Attempt to Dethrone him. But as it was used in the *Roman* Armies to punish whole *Legions*, *Cohorts*, or *Maniples*, for Mutinying or Misbehaviour in time of Action, it must be commended as an Invention of a Noble and Wise Temperature, neither inclining to a Cruel Severity, nor betraying a Slackness of

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\* Horror animum subit quotiens recordor feralem introitum, & hanc solam *Galbae* victoriam cum in oculis urbis decumari deditos juberet quos deprecantes in fidem acceperat. *Tacit. Hist. lib 1. cap. 38.*

## 44 Of the Roman

Discipline; both which have very ill Effects in all kinds of Government. And tho' *Plutarch* relates of *Sertorius*, that he caused all the Slaves who were of *Marius*'s Faction, to the number of Four Thousand, to be shot to death with Arrows, it was a Precedent the most cruel of the Emperours did not chuse to follow. *Julius Capitolinus* says, that when *Macrinus*'s Army mutiny'd, he generally punished them by *Decimation*, but sometimes by *Centesimation*; of which Word he was fond of being the \* *Inventer*, as a Mark of his Clemency, in causing One only of an

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\* Cùm seditiones militares pateretur multò sæpiùs decimavit, aliquando etiam centesimavit, quod verbum ipsius proprium, quod se clementem diceret quando eos centesimaret, qui digni essent Decimatione atque Vigesimalione.  
*In Vita Opilii Macrini, cap. 12.*

Hundred

## *Military Punishments.* 45

Hundred, instead of One in Ten or Twenty that deserv'd it, to be put to death.

Some have been induced by *Polybius*'s Words to think, that the *Fifth*, *Eighth* or *Twentieth* Man was by Lot condemned to die : But *Lipsius* has cleared up this Point, and shewn, his meaning was, that according to the Number of Delinquents, sometimes *Five*, sometimes *Eight*, or perhaps *Twenty* suffered. \* Suppose, says he, *five Decuries* were found guilty, then *five* Men were put to death ; if *Eight* had misbehaved themselves, then *Eight* ; and if *Twenty*, *Twenty* ; that is, the *tenth* Man of each *Decury*.

Yet, upon some occasions, they chose rather to punish the Beginners or Ring-

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\* Pone, *inquit*, quinque Decurias peccasse ; quinque punientur ; pone Octo, Octo ; Viginti, Viginti ; Decimus *scilicet* Decuriarum. *Lipf. De Milit. Rom. lib. 5. Dial. 18.*

leaders

## 46 *Of the Roman*

leaders in the Offence, as *Polybius* tells us *Scipio* did ; who having calmed the Commotion at *Sucro*, and reduced the Mutineers to Submission, commanded the Authors of it only to be executed.

The manner of putting the Sentence of *Decimation* in Execution, was thus : First, the Centurions and Ensign-bearers of the *Cohort* that had misbehaved, were by the *Præfect* or *Tribune* order'd away and put to death ; then the private Men were drawn out into *Decuries* or *Tens*, and cast Lots among themselves who of them should die. Thus it was that \* *L. Apronius* decimated that dishonourable Cohort which run away from *Tacfarinas* in *Africa* ; and *Augustus* at *Promona* a City of

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\* Decumum quinque ignominiosæ cohortis forte du-  
ctos fusti necat. *Tacit. Annal. 3. cap. 21.*

*the Li-*

## Military Punishments. 47

*Liburni*, decimated a Cohort for quitting their Station, ordering the rest to be fed with \* *Barley* instead of *Wheat* for that season. Monsieur *du Chou* mentions a Brass-Coin in his possession wherein this terrible Execution is represented.

Concerning the Inventer of this Punishment, it is not certainly known who he was : But thus much appears from the *Roman History*, That *Appius Claudius* put it in practice soon after the Regal Government ended ; and it seems, it was always reckoned of so great Antiquity, and so peculiar to the *Romans*, that † *Dionysius*

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\* *Appianus in Illyr.* p. 767.

† *Tractatus de Castrametatione & Disciplinâ Militari veterum Romanorum*, p. 54.

‡ *Lib. 4.*

48 *Of the Roman*

*Halycarnassus, Appian and Plutarch, all call it \* Lex Patria. But it suffered a long Interruption, and was afterwards revived and transmitted to Posterity by † M. Crassus.*

The Reason or Design of this Punishment cannot be better explained than it is by † Cicero, viz. That so there might be *Pæna ad paucos, Terror ad omnes.* Neither is the *Justice* of it to be called in question; because it may happen to fall on the *Innocent* as well as the *Guilty*, and the *Brave* may suffer as well as the *Coward*: For,

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\* *Lipsius de Milit. Rom. lib. 5. cap. 18.*

† *Plutarch. in Crasso.*

‡ *Statuerunt majores nostri ut si à multis esset flagitium rei militaris admissum sortione in quosdam animadveretur ut metus videlicet ad omnes, pæna, ad paucos, perveniret. Cicero pro Cluentio.*

## Military Punishments. 49

as \* *Tacitus* observes, every exemplary Punishment, consider'd in it self, hath something in it which is unjust and prejudicial to particular Persons, but sufficiently recompenced by the Service it does the Publick. Yet as it is more agreeable to the Dictates of Reason, that Offences committed by a Multitude should rather be revenged on the Contrivers and busie Abettors, than allotted by blind Chance to the Innocent ; so the † *Romans* frequently follow'd that Rule, of which there has been before given a remarkable Instance, in the detestable Mutiny of *Scipio's Army at Sucro.*

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\* Habet aliquid ex iniquo omne magnum exemplum, quod contra singulos, utilitate publicâ rependitur. *Tacit. Annal. 14. cap. 44.*

† Postquam deliberatum esset an in autores tantum seditionis animadverterent, vel an plurium suppicio vindicarent defctionem vicit sententia lenior ut unde orta culpa esset ibi pena confisteret ad multitudinem castigationem satis esse. *Liv. lib. 28.*



## C H A P. V.

**T**HE next Punishment that occurs, is that of *Beheading* by the *Ax* or *Sword*; the manner whereof is thus describ'd by *Livy*: \* *Immediately the Voice of the Crier was heard citing by Name all that were condemned in the Court-Martial;*

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\* *Præconis audita vox citantis nomina damnatorum in Concilio, Nudi in medium protrahebantur, & simul omnes*

## Military Punishments. 51

Martial; who being produced, were stript naked in the midst of them, and when every thing was ready for Execution, tied to a Stake, whipt with Rods, and then beheaded with the Ax. In this manner \* *Appius Claudius* punish'd the Centurions that had forsaken their Companies and Colours in his Battel with the *Volsci*.

*Lipsius* in his Notes upon † *Tacitus*, is of opinion, that the Use of the Ax as an Instrument of Justice, continu'd no longer than the Free State of *Rome*, and was succeeded under the Empe-

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omnis apparatus supplicii expromebatur. Deligati ad palum virgisque cæsi & securi percutissi sunt. *Liv. lib. 28.*

\* *Livii lib. 2.*

† *Lipsius ad lib. 15. Annal.*

52 *Of the Roman*

Authors by the *Sword*, which, he says, was unknown to the Ancient Republican Government even in the Army ; therefore \* *Lucan* says,

... *Nondum artis erat caput ense rotare.*

But, with all the Deference due to so Great and Learned a Man, one may venture to say he is mistaken in both : For neither was the Use of the *Sword* in Executions wholly unknown in those ancient times, nor is the Poet to be so understood : For his Meaning is, not that there were *many* or *few* beheaded, but that the Executioner, in the Age he wrote, having learnt his Trade

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\* *Lib. 8.*

to a

## *Military Punishments.* 53

to a greater degree of Perfection, could dexterously cut off the Head at a stroke ; which Art was a Secret when *Pompey* was murther'd ; and therefore he describes *Septimius* who cut off his Head, as an ignorant unexperienced Executioner.

*Tunc nervos venasq; secat, nodosq; frangit  
Offa diu,nondum artis erat caput ense rotare.*

*There awkward, haggling, he divides the Bone,  
The Headsman's Art was then but rudely  
known.* [Rowe.

But under the Emperours they grew to be greater Artists ; and tho' the same manner of Beheading had been in use long before, the Executioners were not so expert as to sever the Head from

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from the Body at one Blow. And 'tis evident from the Expression *Jugulum præbere*, which we often meet with in the *Roman* Historians, that *cutting the Throat* with a *Sword* was common under the Free State, as shall be shewn more fully hereafter. But first, it must be observ'd, that *Lipsius* in his Notes upon \* *Tacitus*, prefers the Punishment of the *Sword*, as more honourable than that of the *Ax*; and therefore, says he, when *Papinian* was by Order of *Caracalla* beheaded, in which the Executioner had used the *Ax*, the Emperour said, *Gladio te exequi oportuit meum jussum*; You should have put my Command in execution with the *Sword*. But since this Opinion is not supported with any

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\* *Tacit. Annal. lib. 15. Lipsio interprete.*  
*Casaubonus ad Suetonium in vita Augusti, cap. 15.*

Authority

## Military Punishments. 55

Authority of the Learned, I see no reason why that Reprof, as \* *Valtrinus* judiciously observes, may not be taken either way ; as, that *Caracalla* thought *Papinian* had too much Honour done him by suffering under the *Ax*, as well as that he should design him a Favour, in permitting the Execution to be done with a *Sword* : Nay, the Circumstances of his Death seem to perfaude the contrary : For what Favour could a Man expect, whose Life was taken away for refusing to defend the Emperour's murthering his own Brother ? As to the Passage of † *Xenophon*, cited by *Lipfius*, to prove Beheading the most reputable kind of Death, it seems to make little for his purpose, being in

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\* *Valtrinus De Re Milit. Roman. lib. 6. cap. 8.*

† *Xenophon De Cyri expeditione, lib. 2. extremo, De cæde Menonis Thessali.*

general

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general Terms, without distinction of the Instrument, and that too, of the *Grecians*, not the *Romans*. *Casaubon*, upon better grounds, calls it a milder and more noble Punishment, for which he brings the Authority of *Livy*. \* *The Loss received in the Battel was not so considerable as that the Tarquinians sacrificed three hundred and seven Roman Soldiers, whom they had taken Prisoners; Which shameful Execution rendered their late Disgrace something more notorious.* And then this Learned Commentator adds, the Reason why this kind of Death was accounted so dishonourable, is plain from † *Florus*.

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\* Nec in acie tantum ibi cladis acceptum quam quod cccvii milites Romanos captos Tarquinenses immolaverunt, quam fœditate supplicii aliquantò ignominia populi Romani insignior fuit. *Liv. lib. 7.*

† Legatos quippe nostros, nec gladio quidem, sed ut victimas securi percutiunt. *Flor. lib. 2. cap. 5.*

They

*Military Punishments.* 57

*They put our Embassadors, says he, to death, not with the Sword, but as Victims, with the Ax.* Now whether it can be rightly inferr'd from the foregoing Passage of *Livy*, that the *Sword* was reckon'd a more honourable Instrument of Execution than the *Ax*, is left to the <sup>te</sup>determination of better Judges: For the Disgrace mentioned therein, seems to have arisen, not so much from the Soldiers suffering under the *Ax*, as their being offered by way of *Sacrifice* to the *Infernal Gods* of their Enemies. As for the Passage in *Florus*, 'tis probable, he spoke the Language, and according to the prevailing Opinion of his own time.

But admitting the Punishment of the *Ax* to be less honourable than that of the *Sword*; yet *Lipsius*'s Assertion concerning the Use of the *Sword*'s

I being

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being wholly \* unknown in the time of the Republick, must necessarily fall to the ground: For how could *Florus* make a distinction between the two Punishments, unless that of the *Sword* had been likewise in use? I need not mention the frequent Instances given by † *Hirtius*, of Soldiers being put to death with the *Sword*. Yet it can not be denied, that under the Emperours, the *Ax* by degrees grew into disuse, and was succeeded by the *Sword*.

The Office or Work of *Execution* was generally committed to Persons whose proper Business it was; that is,

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\* *Reip. prisci gladii supplicium fuisse ignotum.* Lips. ad Tacit. Annal. lib. 15.

† *Hirt. Comment. de Bello Afric. & Hispan.*

the

## Military Punishments. 59

the † *Speculatores*. Being brought out of the Camp, as he held his Neck ready for the Stroke, his Fellow-Soldier who was supposed to have been murther'd, appeared. Then the Centurion, who was to see Execution done, bid the Headsman, Speculatorem, put up his Sword. Sometimes Soldiers were deputed for this Office, as *Lipsius* in his Notes upon *Tacitus*, and \* *Steweclius* upon *Vegetius* endeavour to make out by help of this Passage in *Suetonius*: † There was a Soldier, a dextrous Headsman, who

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‡ Extra vallum deductus, & jam cervicem porrigebar, cum subito apparuit ille commilito qui occisus videbatur. Tunc Centurio supplicio præpositus, condere gladium Speculatorem jubet. *Seneca de Irâ*, lib. 1. cap. 16.

\* Erant quippe hi *Speculatores* suppliciis sumendis destinati. *Steweclius ad Vegetium*, lib. 1. cap. 23.

† Miles decollandi artifex quibuscunque è custodiâ capita amputabat. *Sueton. in Vitâ Calig.* cap. 32.

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cut off the Heads of Offenders. Now this Soldier was certainly the *Speculator*. Nor is it any Proof to the contrary, that he was called *Miles*; For so *Chaereas* terms the Executioner, who afterwards cut off his Head at one Blow, and ask'd him, if he were expert \* *ad σφαγας*, or whether that was his first Essay? But *Lipsius* goes farther, and affirms, that the + *Tribunes* sometimes executed Malefactors with their own Hands; and † *Stewechius* concurs in that Opinion, but with this distinction, that they were employed only when the Offender

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\* --- MILITEM à quo uno iictu occisus est, rogavit; an exercitatus esset ad σφαγας, an tum primum haberet gladium? *Joseph. Antiq. Jud. lib. 19. cap. 5.*

† *Lipf. ad Tacit. Annal. 15.*

‡ Id ipsum tunc ita observatum, cum qui paniendus erat aliquā dignitate reliquis antestaret. *Steweob. ad Vegetium, lib. 1. cap. 23.*

was

## *Military Punishments.* 61

was a Person of Rank : Yet by the Authorities they alledge to support this Opinion, it does not appear, that after judicial Sentence of Death, any *Tribune* was ever order'd to do that Office. But in Cases of great Confidence or Secrecy, or when the Person to be dispatch'd was a popular Man, and it might be dangerous or difficult to proceed formally against him ; then, in all likelihood, a *Tribune* was privately ordered to put him out of the way. Thus *Tiberius*, Brother to *Caligula*, was kill'd by a *Tribune* ; and of later Ages, the Marquis *d'Ancre* in *France*, and the Duke of *Wallenstein* in *Germany*, were both taken off by Officers specially commissioned for that purpose. However, it must be allow'd, that both *Centurions* and *Tribunes* had often

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often the Inspection and Superintendency of Executions. All here contended for, is, that it was not common for *Tribunes* or other Officers of distinction to execute Malefactors with their *own Hands*. Hence it was, that *Chaereas* in \* *Josephus*, complain'd, and accus'd *Clemens* and *Papinius* of degenerating from *Soldiers* into *Hangmen*, by submitting to torment and butcher whomsoever the Emperour *Caius* commanded ; which he would not have reproach'd them with, had it been their proper Business ; because they could naturally and truly have answer'd, they were not to blame, since their Office oblig'd them to it. So that, all *Lipsius* proves, amounts to no more, than

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\* *Josephus*, *Antiq. Jud.* lib. 19. cap. 1.

that

## *Military Punishments* 63

that upon occasions, where the Formalities of Law were laid aside, and extraordinary Dispatch and Fidelity requir'd, some bold and resolute Officer was made choice of to give the deadly Blow. Thus *Plautius Lateranus*, *Consul Elect*, was hurried away to the Place of *servile Executions*, and killed by the Hand of \* *Statius* the *Tribune*; and † *Messalina* dy'd *ictu Tribuni*, as *Tacitus* reports. How weak and groundless therefore, this Assertion of *Lipsius* is, the Reader will judge.

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\* *Manu Statii Tribuni trucidatur*, *Tacit. Annal. 15.*

† *Ictu Tribuni transfigitur*. *Tacit. Annal. 11.*

**CHAP.**



## C H A P. VI.

**P**recipitation, or throwing headlong, was a common Punishment among the *Romans*. The Place of Execution was the *Tarpeian Rock*, which is elegantly describ'd by \* *Seneca*, and,

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\* Stat moles abscissa in profundum, frequentibus exasperata saxis, quæ aut elidant corpus, aut de integro gravius impellant, inhorrent scopulis enascentibus latera, & immensæ altitudinis tristis adscētus, electus potissimum locus ne damnati sæpius dejiciantur. *Sen. lib. 1. Controv.*

## Military Punishments. 65

as he says, used in imitation of the *Jews* and *Greeks*; whose *Annals* abound with Examples of that kind. But, as the *Romans* inflicted it alike upon the *Citizen* and *Peasant*, as well as the *Soldier*, it may perhaps, seem irregular, to give it a Place among their Military Punishments ; yet, as History affords some Instances of Soldiers condemned to suffer *that way*, for Crimes committed in their *Military Capacities*, it was not fit silently to pass over so worthy a Monument of the *Roman Severity*. Those Soldiers, then, whom we find were thrown from the *Tarpeian Rock*, were *Deserters* ; of which sort, \* *Marcellus* recovered *Three hundred and se-*

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\* *Livii lib. 24.*

## 66 Of the Roman

venty, in the Towns he took from the *Samnites*; who being sent to *Rome*, were all first scourged with Rods in the *Comitium*, and then pitch'd headlong from the *Tarpeian Rock*, as the *Centinel* had been, thro' whose Neglect the \* *Gauls* had like to have surprized the *Capitol*. Afterwards, whether this Punishment seem'd too cruel and severe to the *Romans*, as † *Faber* and ‡ *Gothofredus* are inclin'd to think; or whether it happen'd thro' the Corruption and Remissness of their Government, it was intirely neglected, and at length repealed, a

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\* *Livii lib. 5.*

† *Faber Semestrium, lib. 1. cap. 18.*

‡ *Gothofredus ad Leg. 35. lib. 43. Digest. De Pe-  
nis.*

¶ Law being enacted that no Man should suffer that kind of death. See *J. Ricquis de Capitolio Romano, cap. 3. & 4.*

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## C H A P. VII.

**S**OME Crimes, as † *Macer* observes, being committed by a *Peasant*, or other Person in a Civil Capacity, are either *not punished at all*, or *very lightly*; but if committed by a *Soldier*, with *great Severity*: Which is thus to be understood, that the same Crime is

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¶ *Non potest quis sic damnari ut de saxo præcipitetur.*  
*Digest. lib. 48. Tit. 19. De Pœnis, Leg. 27. §. 1.*

† *Quædam delicta Pagano aut nullam aut leviorem pœnam irrogant, militi verò graviorem.* *Dig. lib. 48. Tit. 19. De Pœnis.*

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punished in a *Soldier* more rigorously than in another: Not that the *Roman Military Punishments* were in themselves of a more dreadful nature: On the contrary, all that belonged to the *Army*, were by the Laws exempted from suffering many of the most grievous, to which Persons in *Civil Life* were liable; as, to *work* in the \* *Mines*, be *tortured*, or *exposed* to be *devoured* by *Wild* † *Beasts*; For no *Soldier*, says *Modestinus*, was subject to any of these. But this was the Privilege of such only as were clear and unblemish'd

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\* In metallum, aut in opus metalli non dabuntur, nec torquentur. *Dig. lib. 49. Tit. 16. De Re Milit. Leg. 3. §. 1.*

† Ad bestias furcamque damnabitur (*desertor*) quamvis milites eorum nihil patiuntur. *Dig. eod. §. 10.*

in

## Military Punishments. 69

in their Reputations ; which was quite otherwise with *Deserters* and *Fugitives*, who were look'd upon in the Law as \* *Enemies*, not *Soldiers*, and therefore not allow'd the Right of † *Postliminium*, but might be put to death by any † one wherever they were found. Nor had they so much favour, as to be condemned to suffer as *Soldiers*, but like *Murtherers* and *Affassins*, were thrown to Wild Beasts, the most in-

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\* *Proditores transfugæ plerumque capite puniuntur, & exaucorati torquentur ; nam pro hoste, non pro milite habentur.* *Digest. eod. Leg. 7.*

† *Transfugæ nullum Postliminium est ; nam qui malo consilio & proditoris animo patriam reliquit, hostium numero habendus est.* *Digest. Ob. 49. Tit. 15. Leg. 12. §. 4.*

‡ *Transfugas licet ubicunque inventi fuerint, quasi hostes interficere.* *Dig. lib. 48. Tit. 8. ad Leg. Cornel. Leg. 3. §. 6.*

*Digest. lib. 49, Tit. 1. De Appel. Leg. 18.*

famous

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famous of all *Roman* Punishments, and generally inflicted upon *Criminal Slaves*. And tho' a \* *Deserter* returned of his own accord, he did not thereby avoid the Penalty of the *Law*, unless at his return he made some useful Discovery ; in which case his Life might be spar'd ; but that was the utmost Favour he could expect : For † however advantageous his Return might be to the Publick, it could not wipe away the Stain of *Treason* fixed

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\* Is qui ad hostem configit, & rediit, torquebitur, ad bestiasque, vel in Furcam damnabitur. *Dig. lib. 49. Tit. 16. De Re Milit. Leg. 3. §. 10.*

† Quantumcunque enim emolumenti revertens Reipublicæ contulerit, non tamen ad diluendum Majestatis crimen quod ab hostes transeundo contraxit, sufficere poterit. Sic ut illo casu quo nullum ab eo supplicium fuerit exactum ex merâ potius gratiâ atque Principis clementiâ, quam ullo novo merito pœnæ remissio indulta censerit debeat. *Johan. Voet. De Jure Milit. cap. 4. n. 21.*

upon

## *Military Punishments.* 71

upon him, by deserting the Service of his Countrey, and going over to the Enemy: So that if he escaped with Impunity, it was rather owing to the special Grace and Clemency of the Prince, than to any new Merit or Right he could pretend to.

From what has been said, we learn, that the *Romans* punished *Deserters* and *Fugitives*, by delivering them to *Wild Beasts*, as \* *Valerius Maximus* reports *Scipio Africanus* did, after the Subversion of the *Carthaginian Empire*, and † *L. Paulus Aemilius*, when he had subdued

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\* Everso Punico Imperio, exterarum gentium transfugas in edendis populo spectaculis ferit objicit. *Lib. 2. cap. 8. De Discip. Milit.*

† Et L. Paulus Perse Rege superato, ejusdem generis & culpæ homines elephantis proterendos substravit. *Val. Max. cod.*

*Perfes*

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*Perse* King of *Macedon*. But it must be observed, these who were thrown to Wild Beasts, by way of *Punishment*, differ'd very much from such as were brought into the *Arena* to fight with them, being *fast bound to Stakes*, without any possible Means of resisting or defending themselves from the Fury of their ravenous Executioners.

But having before said, that *Deserters* and *Fugitives* were not to be treated as *Soldiers*, but as *Enemies* ; it may be asked, How this can be reckoned a *Military Punishment* ? It is answer'd, that *Military Punishments* are not only *those*, to which ingenuous or free Men are subject ; but such as at any time are inflicted for a *Military Crime*, notwithstanding the Person that suffers be not actually a  
Soldier.

## *Military Punishments.* 73

Soldier. In which sense the *Cross* may likewise be properly enough set down among the *Roman Military Punishments*: For otherwise, it was peculiar to \* *Slaves*, and Crimes of the most pernicious Example. But *Valerius* † *Maximus* and ‡ *Livy* both afford ample Testimony that Deserters to the Enemy were often *Crucified*, and that with great Justice: For what Punishment could be severe or infamous enough for Men that were not ashame'd to draw their *Swords* against their Countrey, and turn them, as it were,

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\* *Plautus Mil. Glorios.* 2. 4. 19.

Conditione fugitivus nomine *Geta* sumptum de eo supplicium in servilem modum. *Tacit. Hist. lib. 2. cap. 72.*

Asiaticus malam potentiam servili supplicio expiavit. *Tacit. Hist. lib. 4. cap. 11.*

† *Valer. Max. lib. 2. cap. 7. De Discipl. Milit.*

‡ *Liv. lib. 30. fine.*

L

into

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into their own Bowels ? But it was used in the Army, in extraordinary Cases only, and for Crimes of a transcendent nature. Therefore *Avidius Cassius* is highly blamed for *Crucifying* certain *Officers*, because they had attack'd the Enemy without Orders : For tho' Antiquity would have born him out, by the Example of \* *Torquatus* and some others, who did not spare their own Children and Relations when they disobey'd Command ; yet the *Romans* had long since receded from that extreme Severity in their Discipline ; and the Example of † *Corbulo* might have taught him

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\* *Posthumius Dictator. Manlius Torquatus. Livii lib. 4. & 8.*

† *Præfectos militesque omnes extra Vallum tendere jussit. Tacit. Annal. 13. cap. 36.*

more

## *Military Punishments.* 75

more Humanity, who on a like occasion, only enjoyn'd the Officers and Soldiers to undergo the Infamy of *Pitching their Tents without the Camp.*

\* *Vulcatius* gives this as an Instance of the Emperour's cruel Disposition : And both he and † *Opilius Macrinus* are by Historians heavily censur'd for punishing their Soldiers in this *barbarous* and *servile* manner.

The *Cross*, being by the Emperour ‡ *Constantine*, in honour of the *Christian Religion*, ordered no longer to be used as a Punishment, the *Furca* succeeded

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\* *Multa extant Crudelitatis potius quam Severitatis ejus indicia ; nam primum milites qui provincialibus aliquid tulissent per vim in illis ipsis locis in quibus pec- caverant in Crucem sustulit.* *Vulcatius, cap. 4.*

† *Capitolinus in Vit. Opili Macrini, cap. 12.*

‡ *Cujacius Observ. 16. 1.*

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in its place ; which, according to \* *Lip-*  
*sius*, was of two kinds, the *Old* and  
the *New* ; but the latter not falling  
within the Design of this Treatise, I  
shall say nothing more of it. The  
*Old Furca* is so called, from being in  
use only among the Antient *Romans*,  
who divided it into *Penalis* and *Ignominiosa*. The Shape of it is very  
much disputed : Some Authors say,  
it was a forked Piece of Timber re-  
sembling the Beam of a Wayne like  
our Letter Y ; others give it another  
Form. Be that as it will, all agree,  
that the *ignominious Furca* was a Punish-  
ment for *Servants convicted of small Of-*  
*fences*, who were forced to carry it upon  
their Shoulders about the City, expo-

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\* *Vide Justi Lipsii lib. De Cruce.*

sed

## *Military Punishments* 77

sed to the Mockery and Derision of all that saw them. The \* *Penal Furca*, was, when the *Malefactor* having it on his Neck, was led up and down the *Circus*, or other Publick Place, being whipp'd all the way till he died under it, or was released and sold for a Slave, like *Mattienus*, for † deserting the Army in Spain: But this Punishment was suppress'd, as † *Geobofredus* says, first, by the Law *Valeria*, and afterwards by the Law *Porcia*.

Another way of punishing *Deserters* and *Fugitives* among the *Romans*, was

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\* Nudi hominis Cervicem inseri Furcæ, corpus virgis ad necem cædi. *Sueton. in Vita Neronis, cap. 49.*

† Qui accusatus apud Tribunos, quod exercitum in Hispaniâ deseruisherit damnatusque sub Furcâ diu Virgis cæsus, & sestertio nummo vœniit. *Liv. Epit. lib. 55.*

‡ *Dig. Tit. De Pœnis, Leg. 8. §. 22.*

*burning*

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burning them alive. \* *Hostes autem, item transfugæ, ea pœna adficiuntur ut vivi exurantur.* But because by the Law of Nations, Enemies, when taken, are to be preserved, and not destroyed, much less in so cruel a manner, † *Cujacius* corrects this Passage ; and instead of *Hostes autem item transfugæ*, makes it *Id est transfugæ*. However, ‡ *Gothofredus* thinks, that Place wants no Amendment ; because by the Word *Hostes* all *Traytors* that plot, or endeavour the Subversion of the Government, are understood, and are a distinct kind of Enemy, who by the Laws are to be burnt alive,

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\* *Cujacius Observ. 6. Observ. 27.*

† *Gothofred. ad Leg. 1. Cod. Theod. Tit. De Re Milit.*

‡ *Gothofr. ad Leg. 8. §. 3. Dig. Tit. De Pœnâ, Lit. E.*

## *Military Punishments.* 79

as well as *Deserters* or *Fugitives* from the Army. Such also who conceal'd or assisted *Deserters* in their Escape, or \* any that were fit to bear Arms, were condemned to the Flames.

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\* Actor ejus fundi in quo alienigena, vel idoneus militiae, vel ante jam traditus latuerit, ultima flammarum animadversione consumatur. *Leg. 2. Cod. Theod. De Deseritoribus.*

Si quis latebram præbuerit desertori possessionis in quâ latuerit amissione multatus, etiam graviorem sententiam pertimescat. Porro Actorem flammis subjiciendum esse non dubites. *Leg. 4. cod.*

CHAP.



## C H A P. VIII.

**H**itherto, of the *Capital Roman Military Punishments*, which were either *Common* or *Proper*, and reached the *Natural Life* of the Offender. Among which, I have not enumerated several inflicted by the latter Emperours ; being rather the Effects of their boundless Power and cruel Dispositions, than proportioned to

## *Military Punishments.* 81

to the \* nature of the Crimes, or design'd to dispose Men to Obedience. Of this kind, was that Piece of Barbarity of † *Aurelian*, who commanded one of his Soldiers convicted of *Adultery*, to have his ‡ Feet tied to the Tops of two Branches of Trees bent down, which being suddenly let fly, tore the Offender to pieces. And *Opilius Macrinus* ordered a || *Tribune*, who had suffered his Guards to desert a Post,

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\* *Ela supplicia non ex merito facinorum irrogantur, sed ex libidine ejus qui irrogat quique suis tristissimis mortibus indulget. Salmas. ad Jul. Capitolinum in Opilio Macrino, cap. 12.*

† *Vopiscus in Vit. Aurelian, cap. 7.*

‡ *This Punishment was not of the Emperour's Invention; but Casaubon says, came from Persia. It is called, Diaphendonesis. Vide Montfaulcon's Antiq. Vol. 4.*

|| *Tribunum qui excubias deserit passus est, carpento rotali superadnexum per totum iter vivum atque exanimem traxerit. Capitolinus in Vit. Opili, cap. 12.*

M to

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to be bound fast to the Top of a Waggon, and carried so a whole Day's March. The same Emperour being informed, that Two Soldiers had deflower'd their Landlord's Servant-Maid, immediately caused the Bellies of two Oxen to be ripp'd open, out of which the Paunches were taken, and then the Soldiers sew'd alive in them, the Heads of the Oxen being cut off, that so the miserable Couple might speak to one another as long as their Agony suffered them to live. A Punishment, says \* *Capitolinus*, known neither to the Antients nor Moderns, even in Cases of

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\* Quum ne *Adulteriis* quidem talia apud Majores, vel sui temporis essent constituta supplicia. *Capitolinus* in *Vit. Opilii*, cap. 12.

*Adul-*

## *Military Punishments.* 83

*Adultery.* But, not to dwell on so disagreeable a Subject, I shall proceed to consider those *Military Punishments*, which affected the Offender's *Liberty*, his *Rights* as a *Citizen*, or his *Body* by *Mutilation*.



M 2 CHAP,



## C H A P. IX.

**T**HE First of these is *Slavery*, *Servitus*, so called, not à *ser-  
viendo* from *serving*, as some have ima-  
gined; but *servando*, *saving*, or *preserving*,  
as *Justinian* says; because the *Roman*  
\*Emperors were used to preserve and sell,

Servi autem ex eo appellati sunt quod Imperatores  
captivos vendere, ac per hoc *servare*, nec occidere so-  
lent. *Justin. Instit. lib. 1. Tit. 3. De Jure Personarum.*

not

not to destroy such as they took Captives in War. It was introduced by the † *Law of Nations*, and very much cultivated by the *Romans*.

A Freeman might be reduced to the State of *Slavery* several ways. *Justinian* furnishes us with one Example, in a Person, who being under Age, suffers himself to be \* sold into Bondage for the sake of sharing the Money. To which may be added, the Case of enfranchised Persons, who turned un-

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† *Servitus autem est constitutio Jurisgentium.* *Justin.*  
*cod.*

\* *Cum liber homo major xx annis ad pretium participandum sese venundari patus est.* *Eod.*

*Si manumissus ingratus circa Patronum suum extiterit, & quādam jactantiā vel contumaciā cervicem adversus eum erexerit, aut levis offendit contraxerit culpam, à Patrono rursus sub imperium ditionemque mittatur.* *Cod. lib. 6. Tit. 7. De Libert. & eorum Liberis. Leg. 2.*

grate-

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grateful to their Patrons. Thus the Emperour † *Claudius* condemned those of whose Ingratitude their Patrons complained, to their former Servitude; refusing to give Sentence against those who had enfranchised them when their Advocates applied for it. But notwithstanding this be generally spoken by *Suetonius*, *Casaubon*, upon the Authority of a Law in the *Digest*, limits it to One Case only; that is, when they became *Informers themselves*, or *suborned Others to be so* against their Patrons. The *Laws*, however, make no such distin-

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† *Ingratos & de quibus Patroni quererentur revocavit in servitutem advocatisque eorum negavit se adversus Libertos eorum Jus dicturum.* *Sueton. in Vitâ Claudi,*  
*cap. 25.*

ction;

## *Military Punishments.* 87

ction ; but condemn them and their Children , altho' they were in the \* *Military Service*, to their pristine Condition of *Slavery*. But this was not the only Fault for which Soldiers suffered that Punishment. All that were *ungrateful* to their *Country* and the *Government* which protected them, by refusing to † *answer to their Names*; or *appear at the Muster upon Levies*, were sentenced as *Traytors* to the *Publick Liberty*, to pass the rest of their *Lives in Slavery*, and some even after

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\* *Libertinæ conditionis homines vel earum filii etiam MILITANTES qui docebuntur ingratii, ad servitutis nexum proculdubio reducentur.* *Cod. lib. Lig. 2. Tit. De Libert. & eorum Liberis.*

† *Gravius autem delictum est detrectare munus militiae quam adipetere : nam & qui ad delectum olim non respondebant ut proditores Libertatis in servitutem redigebantur.* *Dig. lib. 49. Tit. 16. De Re Militari, Leg. 4. Sect. 10.*

long

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long Service, were for heinous Crimes sold and made Slaves, as I have before instanced in *Mattienus*. When *Fulvius* a Tribune, had taken upon him *in his turn of Duty*, to discharge a whole *Legion*, *Posthumius*, another Tribune of the same, gave account of it to the Senate ; and pursuing the Men that were dismiss'd, brought several of them back ; the rest were recalled by an Order, and the \* *Consul* had a Warrant from the Senate to put to Sale every Man that did not return, *with all that he was worth*. † *Lampri-dius* reports of the Emperour *Alexander Severus*, that hearing, a young Soldier

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\* *Livii lib. 40.*

† *In Vita Alex. Severi.*

had

## *Military Punishments* 89

had injured a poor Woman in stealing from her some Goods, he commanded him to be *disarmed, declared a Slave,* and given to the Woman to gain her a Livelihood by his Drudgery. A Roman \* Knight having *cut off the Thumbs* of his two Sons, that they might be incapable of serving in the Army, *Augustus* order'd him and his Goods to be *sold*; and when he saw the Slave-jobbers greedy of the Purchase, with a design of releasing him again for Money, he gave him to his manumitted Slave, that he might be sent into the Countrey to live

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\* Equitem Romanum quod duobus filiis adolescentibus causa detrectandi Sacramenti pollices amputasset ipsum bonaque subjecit hastae; quem tamen quod immittre emptioni publicanos videbat, liberto suo addixit, ut relegatum in agris pro libero esse sineret. *Sueton. in August. cap. 24.*

N

free.

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free. But we must remember to distinguish between *Hominum Servi*, and *Pæne Servi*; such as were in a State of Bondage, and obliged to serve others in carrying on their domestick or other lawful Affairs; and such as were condemned to work in the \* Mines, or the High-ways, from which *Soldiers* were by the † Laws exempted.

Before I leave this Chapter, it may not be amiss to take notice, that it was a common thing with the *Romans*, whatever is said of their Bravery, to disqualifie themselves for Military Service, by *cutting off* their *Thumbs*; and

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\* Ad metallum, aut ad viarum munitiones. *Suetop. in Calig. cap. 27.*

† *Dig. lib. 49. Tit. 16. De Re Milit. Leg. 3. §. 1.*

therefore

## Military Punishments. 91

therefore † *Ammianus Marcellinus* speaking of the Dispositions and Manners of the Gauls, says, that none of them ever *cut off* their *Thumbs* to make themselves incapable of Military Duties as the *Italians* had done ; and accordingly there were several Laws made by the *Romans* to restrain such Cowardly Practices. \* *Trajan* made one, *That the Person who disabled his Son when any Levy was made for War, so that he could not be fit for Military Service, should be banished.* And

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† Nec illorum quisquam ut in Italiâ munus Martium extimescens pollicem sibi præscidit quos joculariter *Murcos* appellant. *Ammian. lib. 15. sub fine.*

\* Eum qui filium debilitavit delectu per bellum indicto, ut inhabilis militiæ sit ; præceptum Divi Trajani deportavit. *Dig. Lib. 49. Tit. 16. De Re Milit. Leg. 4. §. 12.*

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there is another of \* Constantine's extant to this purpose: *That the Sons of Veteran Soldiers fit for the service of the War, some of which have refused to lift themselves out of Sloth and Laziness, and others have been so cowardly as to maim themselves only to avoid that Duty; if they be thought incapable to serve in the Army, shall be forced to attend the most servile Offices about the Court. He that thinks to excuse himself, from bearing Arms, by cutting off his own Fingers, shall not escape what he designed to avoid by it; but shall with that Mark of Infamy, be forced to undergo the Drudgery of the Service, since*

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\* Si ad Militiam inutiles resectis digitis judicentur curialibus muneribus atque obsequiis adgregari. Cod. Theod. Leg. 1. Tit. De Filiis Milit. apparat. Et vet. Et De Tyronibus, Leg. 4. 10.

be

## Military Punishments. 93

be refused the Honour of it. But the severest Law against these Cowards, is that in the *Digest* ; If any one, to avoid being press'd for the War, bath, as he thinks, secured his Body from Danger, by cutting off his Fingers, he shall be condemned to be burnt ; and the Master that doth not binder him, shall incur a severe Penalty. But from the Close of this Law, 'tis likely it was designed only against *Slaves*, who upon sudden Emergencies were allowed to carry Arms. The other *Laws* comprehended *Freemen*. These pusillanimous Fellows were, by way of Ridicule, called *Murci*. And some learned Men have thought, that our Modern French Word *Poltron* comes from this *Pollicum truncatione, cutting off the Thumbs.*

But

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But Monsieur \* *Menage* and † *Puffendorf* likewise, seem to be of opinion, it is rather derived from the *Italian* Word *Poltro*, which signifies a Fellow that indulges himself at home upon his Couch. However, 'tis not to be disputed that the *Italian* had its Original from these *Pollicum truncatoribus*, as exactly describing, and agreeing with the Character they deserve.

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\* *In Origin. Ling. Franc.*

† *Puffendorf. Translat. Book 8. cap. 2.*

CHAP.



## CHAP. X.

**B**anishment, in *Latin Exsilio, ab ex & solo*, is properly the *Change of a Man's Place of Abode or Countrey, by way of Punishment*; such as had transgress'd the *Laws*, being commanded to leave their Countrey, and go to some other. Hence is the Greek Proverb  $\gamma\bar{n}\nu\pi\varrho\gamma\bar{n}\varepsilon$ , *terram pro terrâ*. There were two sorts of Banishment among

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among the Romans, the *Voluntary* and the *Necessary* : But the First being rather a wise and timely \* Retreat, and the free Choice of the Person, who left his Countrey to avoid the possible Severity of a formal Sentence of *Banishment*, is scarcely to be called a *Punishment*, nor is it to my purpose.

The *Necessary* or *Forced Banishment* here spoken of, was of three kinds ; either from † *certain Places*, or from *all* ; which latter was called *Latafuga*, or to *one only*. Concerning which

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\* Hic enim timens ne posteà privato sibi eadem illa cum bonorum amissione additaque alia insuper ignominia acciderent, abdicavit se Consulatu rebusque suis omnibus Lavinium translatis civitate cessit. *Liv. lib. 2.*

† Aut certorum locorum interdictio, aut *Lata fuga* ut omnium locorum interdicatur, aut in insulæ vinculum, id est, relegatio. *Marcianus l. 5. d. De Interdict. & Releg.*

there

## *Military Punishments.* 97

there is great variety of Opinions among the *Lawyers*.

Persons of all conditions, as well *Men* as *Women*, were liable to this Punishment, as \* *Suetonius* and *Ovid* both testify. But, to bring it home to the Point in hand, *Livy* tells us, that the Remains of the Army after the Battel of *Cannæ* were all banish'd to *Sicily*, there to continue as long as the War lasted in *Italy*. And *Ammianus Marcellinus* relates, that † *Romanus* and *Vincentius*, both *Tribunes*, were sent into Banishment for aiming at Matters above

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\* *Sueton. in Vitâ Augusti*, c. 55. Ovid. *Trist.* 1. 1. *Ver.*  
193.

† *Vide Fabrum in Semestr.* 11. *cap. 5.*

‡ *Romanus* quinetiam & *Vincentius* Scutariorum scholæ, primæ secundæque Tribuni agitâsse convicti quædam suis viribus altiora, acti sunt in exilium. *Ammian. Marcell.* lib. 22.

O

their

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their spheres. When *Julius Cæsar's* Army was dejected, at the Report of the vast Number of *Juba's* Forces, he spake to them to this effect: *Be \* assured the King will be with us in a short time; therefore let none among you take upon them to mutter or argue about it; but believe what I say, or else I shall certainly take care to have them shipp'd in some old shatter'd Vessel, and commit them to the Mercy of the Winds and Waves.* But this kind of *Banishment* was more frequently used in their Naval Service, as † *Schefferus* instances out of *Strabo*.

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\* *Suetonius in Jul. Cæsar, cap. 56.*

† *Schefferus de Milit. Naval. Vet. 4. c. 2.*

CHAP.



## CHAP. XI.

**B**reaking of the *Legs* was a *Roman* Punishment for *Slaves* and Persons of inferior Degree. *Thallo*, by Command of \* *Augustus*, had his *Legs* broken, for discovering the *Contents* of a *Letter*, for a *Sum* of *Money*;

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\* *Sueton. in Vitâ Augusti. cap. 67.*

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yet 'twas sometimes inflicted upon *Freemen*, and those too of the First Rank. Thus *M. \* Marius* in whose honour the *Romans* erected several *Statues* in their Streets, had his *Legs broken* by Order of *L. Sylla*: And † *Ammianus* tells us of certain *Soldiers*, who met with the same Fate for not following their proper *Ensigns*. In exacting which *Punishment*, I mean *Mutilation*, the *Romans* generally observed this Rule, of making the Parts suffer most, which were principally concerned in the Offence; as, by *cutting off* the *Hands* of such as were guilty of *Forgery*, *castrating* *Adulterers*, and

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• *Seneca de Irâ*, 3. cap. 18.

† *Ammianus*, lib. 23.

the

## Military Punishments. 101

the like. So *Fugitives* were condemned to have their *Legs cut off*, that their Punishment might be more conspicuous. *Avidius Cassius* condemn'd many *Deserters* to have their *Hands* and *Legs cut off*, giving this reason for it, \* That the living miserable Example of an Offender was of greater service than that of his Death. *Vulcatius Gallicanus* says in the same Emperour's Life, that he was the Inventer of *cutting off the Hands and Legs of Deserters*. But *Valerius Maximus*, under the Head of *Military Discipline*, shews, that † *Fabius Maximus*, who comman-

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\* Multis Desertoribus manus excidit ac poplites, dicens majus esse exemplum viventis miserabiliter criminosi quam occisi, &c. *Liv. lib. 25.*

† Omnia qui ex praesidiis Romanorum ad hostes transfugerant, captique erant, manus abscidit ut truncâ praes brachia gestantes metum defectionis reliquis injicerent. *Valer. Max. lib. 2. cap. 7.*

ded

ded the *Roman Army* against *Hanibal* above three hundred Years before, *cut off the Hands* of all that had deserted from the *Roman Garrisons* to the *Enemy*, as soon as they were retaken, *that so by the miserable Spectacle of their mangled Limbs they might infuse into their Comrades an Abhorrence of the like Crime*. We find also in \* *Frontinus*, this was the Punishment of such as robb'd or stole any thing from their Fellow-Soldiers, unless by way of Favour, they were only sentenced to have a *Vein opened in principiis*, that is, at the Head-Quarters; Which being the Repository of their

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\* *M. Cato memoriæ prodidit, in furto comprehensis, inter commilitones dextræ esse præcisæ, aut si lentius animadvertere voluissent, in principiis sanguinem missum.*  
*Frontin. Stratagemat. 4. 1.*

*Camp,*

## Military Punishments. 103

*Camp, Deities, Eagles and other Ensigns* were accounted sacred, and, as \* *Festus*, and after him *Lipsius*, will have it, the Place where Military Punishments were for the most part exacted. But † *Cuperus* startles at the Impiety, and will by no means be induced to believe the *Romans* could be so wicked as to affront their Gods with so filthy a Spectacle: Yet he allows, Punishments of *Shame* were inflicted there in the sight of the *Tribunes, Centurions and Guards*. This Difficulty is solved by ‡ *J. Perizonius*. In the first Ages,

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\* *Festus in V. principalis porta. Atque ibidem locorum pleraque exactæ pœnæ militares. Lipsius de Milit. Rom. Lib. 5. Dial. 18.*

† *Grisb. Cuperus Observ. l. 4. c. 19.*

‡ *Jac. Perizonius Diff. 1. § 23. & seqq.*

fays

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says he, *common Soldiers* that had offended capitally, were punished *within* the *Camp*, as *Malefactors* were *in* the *Comitium* at *Rome*: But when Publick Examples grew to be more frequent, and thereby the Benefit expected from them abated, the Place of Execution was removed from the *Inside* to the *Outside* of the *Camp* and *City*.

\*\*\*\*\*  
CHAP.

CHAP. XII.

**L**etting of Blood is a Military Punishment taken notice of by *Frontinus* and likewise by † *Aulus Gellius*; who not being able otherwise to account for the Reason of it, imagines it was first introduced by way of Remedy for those that were overstock'd with Blood, or any ways lethargically inclined; and herein he is followed by many of the † Learned, amongst whom is \* *Alexander ab Alex-*

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† *Gellius Noct. Attic.* 10. 8.

‡ *Faber Semestr.* 1. 17.

† *Alex. ab Alex. Gen. Dier.* 11. 13.

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andro ; because, say they, the Animal Spirits are clogg'd by a Superfluity of Blood ; which being drawn off, are restored to their Motion, and the Patient to the free Exercise of his Reason. But how can it be thought, the *Romans* studied the *Principles of Physick* in the Execution of their Military Punishments ? \* *Muretus* contradicts *Gellius*, and thinks, it was rather That such as were unwilling to sacrifice their *Blood* in the *Defence of their Countrey*, should be compelled to lose it with *Shame* and *Dishonour*. But, says *Lipsius*, how could that be, when *Thieves*, who were under no such Obligation, were punish'd after the same manner ?

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\* *Muretus Var. Lett. 13.*

To

## *Military Punishments.* 107

To this it is answer'd by *Thysius* in favour of *Muretus*, that originally it was a *Military Punishment*, tho' afterwards applied to Crimes against the *Civil Government*: And he resolves the reason of it into this, That such as were sparing, or fearful of *shedding the Enemy's Blood*, should be condemn'd to pay for it by a *disgraceful Loss* of their own. \* *Valtrinus* concurs with *Thysius*; and *Gronovius* in his Edition of *Aulus Gellius*, seems to think, it was once the only Punishment of Disgrace used in the *Roman Armies*: So that it grew a Proverb, *Dandum esse invidie sanguinem*; and by the Invention of other Marks of Infamy, at length became

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\* *Valtrinus lib. 6. cap. 8.*

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peculiar to the Case of Cowardice and **Fear**. But, says *Sichterman*, since every one is at liberty to speak his mind, I confess, the Reason which *Lipsius* gives, seems to me to have most Weight in it, *viz.* *That it was done in token of some greater Punishment incur'd, the extremity whereof being remitted, was still express'd and figur'd out by the Effusion of a little Blood*, as we turn Delinquents out of the Service with a Rope about their Necks, to shew they deserv'd to be hanged.

CHAP.



### CHAP. XIII.

THE two kinds of *Beating*, viz. *Fustigatio* and *Castigatio* are sufficiently explained in the Chapter treating of the *Fustuarium*. I come now to speak of the other sort of *Castigation*, distinguished by the Name of *Fustium Admonitio*; which, as is shewn before, differs widely from the *Fustuarium*, and is a far less Punishment

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Punishment than *Flagellatio*, or *Whipping*. And tho' it has been already said, that the *Castigatio* was executed with *Rods*, it must be taken in a general sense: For when *Soldiers* were condemned to suffer it, they used *Sticks* or *Cudgels*, and not \* *Rods* or *Scourges*; which were seldom given to a Soldier, unless Beheading was to ensue: Tho' there are some Instances of *Whipping* being followed with † *Degradation*.

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\* *Virgarum contumeliosa verbera.* *Valerius.* Et raro etiam in militiâ legas, raro inquam, nisi ubi mors à securi consecuta, & hæ solenniter tunc præiverunt. *Lipf.* de *M. R.* lib. 5. Dial. 18.

† Jam C. Cotta, P. Aurelium Pecuniolam sanguine sibi junctum quem obsidioni Liparitanæ ad auspicia repetenda Messanam transitus præfecerat Virgis caesum gregalis militiæ munere inter pedites fungi coegit, quod ejus culpa agger incensus & pene castra fuerant capta. *Valer.* *Max.* lib. 2. c 7.

Their

## Military Punishments. III

Their *Battoons*, *Sticks* or *Cudgels*, were of different Materials ; as *Oak*, *Elm* or *Beach* ; but those used upon *Soldiers* by way of *Admonition*, were of the *Vine-Tree*, which, to use \* *Pliny's* Words, grace the Punishment, and therefore were reserved for the Backs of *Natural-born Romans*. When any *Soldier*, says *Livy*, speaking of *Scipio's* Reformation of the Army, was discovered † stragling upon the March, if a *Roman*, his Punishment was, to be corrected *Vitibus*, with *Vine-Twigs* ; if a Foreigner, *Fustibus*, with *Cudgels* of any kind. This Use of the *Vine* is frequently to be met with in the

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\* *Poenam ipsam honorat. Plin. Hist. Nat. l.14. c.1.*

† *Quem militem extra ordinem deprehendit, si Romanus esset, Vitibus; si Extraneus, Fustibus cecidit. Livius, lib. 57.*

*Roman*

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*Roman Authors.* And tho' *Sigoniis* in his Notes upon this Passage of *Livy* corrects the old Reading, and says instead of *Virgis*, it ought to be *Fustibus*; yet he cannot thereby intend the *Fustuarium* described by *Polybius*; because that ended in the Death of the Transgressor: Which was manifestly otherwise in this Case; the only difference in this Punishment being, that one was beaten *Vitibus*, the other *Fustibus*. Now, there is no Historical Evidence, that a *Roman Soldier* was ever beaten to death with the *Vine*. *Polybius*, indeed, touches upon the *Castigatio*, but 'tis very slightly; he says no more, than that the *Tribunes* had a Right of beating; and confounds the Correction given by

the

## Military Punishments. 113

the *Vine*, with the *Fustuarium*. \* *Cos-tereus* falls into the same Errour, and produces indiscriminately, Examples of both these kinds of Punishment.

The giving of this Correction properly belonged to the *Centurions*: Whence † *Tacitus* tells a Story of one, whom the Soldiers had nick-nam'd *Cedo alteram*, *Give me another*; because when he had broken one *Vine-Wand* upon the Soldier's Back, his manner was to call aloud, *Give me another*, and when that was broken, *another*, Hence we learn, that the *Vine-Wand*

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\* *De Jure & Privilegiis Milit. lib. 3. cap. 17.*

† *Centurio, Lucilius interficitur cui militaribus fac-  
tiis vocabulum Cedo alteram indiderant, quia fractâ Vite  
in tergo militis, alteram clarâ voce, ac rursus aliam  
poscebat. Tacit. Annal. 1. cap. 23.*

Q

was

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was the *Centurion's Ensign of Distinction* ; and so it is taken by the *Scholiast* upon *Juvenal* ; who in Explanation of this Passage, — *Vitem posce libello*, has this Paraphrase, — *Id est, ut Centurio fias, da Libellos* ; that is, *Prefer a Petition to be made a Centurion* : For such as had the Privilege to carry the *Vine*, were *Centurions* ; and the Office it self is often express'd by the Word *Vitis*, in *Spartianus*, *Tacitus*, *Martial* and *Lucan*. Sometimes it was given as our Signs Manual are, to \*secure the Reversion of an Employment upon Death or Dismission.

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\* *Casaubonus ex Eusebio. Vide Sichterman De Panis Militaribus, cap. 12.*

Among

## Military Punishments. 115

Among many other Offences corrected this Way, was *\* Negligence in obeying lawful Commands, † Loitering behind, and stragling upon the March.*

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*† Centurionum in manu Vitis, & optimo præmio tardos ordines ad lentas aquilas perducit, atque etiam in delictis pænam ipsam honorat. Plin. Nat. Hist. lib. 14. cap. 1.*

*† Nodosam posthæc frangebat vertice Vitem  
Si lensus pigra muniret castra dolabra.*

*Juven. Sat. 8, v. 48.*

\*\*\*\*\*

Q 2

CHAP.



C H A P. XIV.

**I** Come now to speak of Punishments attended with *Infamy*, of which the *Missio ignominiosa*, or *shameful Discharge* was the Chief.

The Romans had Four Ways of Dismissing Men from the Service. The first was, *When they had served out their time appointed by the*

*\* Law,*

## Military Punishments. 117

\* *Law*, and this was called *Justa Missio*. The second was, for good and sufficient Reasons; as, when the Party was wounded, lame, or so infirm, that he could not serve longer: This they called *Missio causaria*, an occasional *Dismission*. The third was, When Men were turned out of the Army for Crimes; and this they called *Missio ignominiosa*, a shameful *Dismission*. † *Lipsius* adds the Fourth: Which was, When a General

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\* Quia Lege certus annorum numerus definitus, nec sumere aut ponere militiam volentibus erat. *Lips. De Milit. Rom. lib. 5. Dial. 19.*

† Missionum generales causæ sunt tres; *Honesta, Causaria, Ignominiosa*. *Honesta* est, quæ tempore militiæ impleto datur. *Causaria*, cùm quis vitio animi vel corporis minus idoneus militiæ renunciatur. *Ignominiosa* causa est, cùm quis propter militare delictum sacramento solvitur. *Dig. Lib. 49. Tit. 19. De Re Milit. Leg. 13. §. 3.*

‡ *Lib. 5. De Milit. Rom. Dial. 19.*

or

## 118 Of the Roman

or Tribune gave a Soldier his Discharge out of Grace and Favour. And \* Sir Charles Turner says, sometimes for Money: But this, as illegal and prejudicial to the Service, was often rescinded by the Censors. But as it was always considered as part of the † Power and Privilege of a General to discharge whom he thought fit. † *Ulpian* allows this Discharge out of Favour, to be *Honesta Missio*, when it is done without Reward or prospect of private Gain.

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\* *Pallas Armata*, Book 2. Ch. 24.

† Missorum quoque causas sese cognituros esse, & quorum ante emerita stipendia gratiosa Missio sibi visa est eos milites fieri jussuros. *Liv. lib. 43.*

‡ Multa genera sunt Missionum, *Honestia*, quæ emeritis stipendiis, vel antè ab Imperatore indulgetur. *Digest. lib. 3. Tit. 2. De his qui notantur infamia, Leg. 2. §. 2.*

To

## *Military Punishments.* 119

To return to the *ignominiosa Missio*, which alone relates to my Design.

\* *Macer* defines it to be, *when a Man for a Crime committed, is discharged of his Military Oath*. He says nothing of the Words *ignominiae causâ*, which † *Ulpian* thinks absolutely necessary, and that no Soldier ought to be turned out of the Service, without mentioning the Cause of his Dismission. Yet *Ulpian* in the same Law admits, there is no occasion of that Addition, provided he be stripp'd of his Arms and all

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\* Cùm quis propter militare delictum sacramento solvitur. *Dig. lib. 49. Tit. 16. De Re Milit. Leg. 13. §.3.*

† *Ignominiosa* autem *missio* toties est quoties is qui mittit, addit nominatim *IGNOMINIÆ causâ* se mittere; semper enim debet addere *cur miles mittatur*. Sed si eum exauctoraverit, id est, insignia militaria detraxerit, inter infames efficit licet non addidisset *IGNOMINIÆ causâ* se eum exauctorâsse. *Dig. lib. 3. Tit. 2. De his qui notantur infamia. Leg. 2. §.2.*

Badges

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Badges of Military Honour taken from him. There are Instances to be brought of both kinds, which, for the clearing of this Point, may not impertinently be inserted here. \* *Publius Rutilius*, in the War he made upon the Fugitives in *Sicily*, dismissed his Son-in-law for suffering a Place of Strength to be lost by Negligence. And *Cæsar* in *Africa* discharged † *Fonteius*, because he was *seditionis* and *a bad Citizen*. There is no mention in either of these Cases, that they were

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\* *P. Rutilius* Consul eo bello quod in Siciliâ cum fugitivis gessit. Quintum Fabium generum suum, quia negligentiâ Taurominitanam arcem miserat, provincia justit decidere. *Valer. Max. lib. 2. cap. 7. De Disciplinâ Milit.*

† Itemque te A. Fontei, quod Tribunus militum seditionis malisque civis fuisti, ab exercitu dimitto. *Hirt. de Bello African.*

turned

turned out of the Army *ignominie causâ*; yet 'tis not to be doubted, they were obliged to leave their Arms behind, and divest themselves of all Military Ensigns before they were sent away. Of the other kind, *Hirtius* gives us an Instance, in the *African War*; where he describes *Cæsar* discharging *Avienus*; and after enumerating several Crimes of which he was guilty, saying to him, *Ob eas res IGNOMINIAE causâ ab exercitu meo te removeo: For those things I turn thee out of my Army with Shame.*

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\* *Cæsar* postero die de suggestu convocatis omnium Legionum Tribunis Centurionibusque C. Aviene quod in Italiâ milites populi Romani contra Remp. instigasti, rapinasque per municipia fecisti; *Ob eas res IGNOMINIAE CAUSA, ab exercitu meo te removeo, hodieque ab Africâ abesse, & quantum potes proficiisci jubeo.* *Hirt. loc. cit.*

\* *Suetonius* also reports, that *Caligula* dismissed the Commanders of some auxiliary Forces *cum ignominia*, because they had not repaired to the Place of *Rendezvous* by the time appointed.

From these Instances 'tis plain, that not only private Soldiers, but Officers of all Degrees, were subject to this kind of Dismission : Nay, † *Pomponius* includes the *General* himself,

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\* Postquam castra attigit, ut se acrem & severum Duceat ostenderet Legatos qui auxilia serius ex diversis locis adduxerant, cum *IGNOMINIA* dimisit. *Sueton. in Vit. Calig. cap. 44.*

† Quod ait *Prætor* : *Qui ab exercitu dimissus erit* : *Dimissum accipere debemus militem caligatum, vel si quis alius, usque ad Centurionem, vel *Præfectum Cohortis, vel Alæ, vel Legionis*, (vel *Tribunum* sive *Cohortis* sive *Legionis*) dimissus est.* Hoc amplius, *Pomponius* ait, *etiam eum qui Exercitu *præest*, licet Consularibus insignibus utitur *ignominie causâ*, ab Imperatore missum hâc notâ laborare.* *Dig. lib. 3. Tit. 2. De his qui notantur infamia, Leg. 1.*

who

who was accounted infamous, if dismissed from his Command in this manner. Nor could there be a more grievous Punishment inflicted upon Men of Spirit: For it was generally attended with *perpetual Banishment* from the † *Army* and *Court*, unless the Sentence made it † *Temporary*; and then the *Infamy* vanish'd upon the Expiration of the time limited.

This *ignominious Dismissal* is in the *Lawyers* and *Historians* frequently express'd by the Word *Exauctoratio*; and it seems to be the true Meaning

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† Et is qui *Ignominia* missus est, neque Romæ, neque in sacro Comitatu agere potest. *Digest. lib. 49. Tit. 16. De Re Milit. Leg. 13. §. 3.*

‡ Quibus posthac ordini suo vel advocationi ad tempus interdicetur post impletum temporis spatium non prodrogabitus infamia. *Cod. lib. 10. Tit. 59. De his qui in exfil. Leg. 1.*

R 2 thereof,

thereof, notwithstanding † *Lipsius* confines it to another Sense ; that is, *When a Legion was disbanded, yet not dispersed, but kept together under their proper Colours, till they had Lands set out, or other Rewards given them for their long Service* ; During which Expectation they were exempted from all kind of Duty, except Fighting against the Enemy. It is not to be disputed, but that *Exauctoratio* does likewise include this Case, and that by *Exauctorati*, we are often to understand *Subsignani Veterani & Vexillarii* ; yet according to ‡ *Suetonius, Ulpianus* and many others, this is not its proper

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† *Lipsius, De Milit. Roman. lib. 5. Dial. 19.*

‡ *Vidend. Turneb. advers. lib. 2. cap. 3.*

signification :

## Military Punishments. 125

signification : For excepting a few Examples, which prove its meaning to be as *Lipsius* and \* *Valtrinus* explain, all the rest evidently relate to the *Ignominious Dismission*. Thus † *Ulpian* uses *Exauctorare*, for *Insignia militaria detrahere*; and he is said to be ‡ *exauctoratus*, *qui militia remotus castris ejicitur*, Who is discharged of the service, and turned out of the Camp. And † *Lampridius* in the Life of *Alexander Severus*, *He was so severe, that sometimes*

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\* *Valtrinus*, lib. 6. cap. 8.

† Sed & si eum exauctoraverit, id est, insignia militaria detraxerit, inter infames efficit. *Dig. lib. 3. Tit. 2. De his qui notantur infamia. Leg. 2. §. 2.*

‡ *Dig. lib. 40. Tit. 12. De liberali causa. Leg. 29. Pr.*

‡ *Severitatis tantæ fuit in milites, ut saepe Legiones integras exauctoraverit. Lamprid. in Vita Alexandri Severi, cap. 52.*

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*be dismiss'd (with Infamy) Whole Legions.* \* *Suetonius* says, *Augustus exauc-  
toravit*, disbanded certain Cohorts, without giving them the Rewards of their long Service: But in this case there was no *Infamy*; which is a third Signification different from both the former, applicable to the Word *Exauc-  
toratio*. But we shall often find these Expressions, † *Cingulo privari*, *Matriculâ eximi*, *Sacramento solvi*, & *Exui*, used for *Exaucitorare*, especially in the *Theodosian Code*.

It is observed from *Ulpian*, that on these occasions of *dismissing* with

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\* *Citra commoda emeritorum præmiorum exauc-  
toravit Cohortes. In Vitâ Augusti, cap. 24.*

† *Vide Paratit. Gothofredi ad lib. 8.*

*Infamy,*

## Military Punishments. 127

*Infamy*, the Offender was divested of his *Insignia militaria*, the Badges of his *military Profession*. \* These in a *common Soldier*, were his *Arms* and *Armour*, in a *subaltern Officer* or chief *Commander*, both *Armour* and *Ensigns*, as also the *Belt* or *Girdle* with which they girt themselves about, in order to be the more disengaged and active against the *Enemy*; it being customary for the *Romans*, when they went about business, to shorten and gird up their *Cloaths*. Hence *cincti* is often used for † *Milites*, *Soldiers*, or *Men of Activity*, and *Discincti* for *Peasants*, or *lazy sluggish Fellows*. In like manner,

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\* *Casaubonus ad Sueton. Augusti, cap. 24.*

† *Milites verò & fœderati qui eis post dilationem observaverint non solum MILITIA spoliabuntur, sed etiam ultima sustinebunt supplicia. Novel. 116. cap. 1.*

we

## 128 *Of the Roman*

we shall frequently find \* *Cingulum* to signify the same as *Militia*, and *e converso*. Thus we read, such as employed themselves in private Service, were first *Militia*, i. e. *Cingulo spoliati*, deprived of their Place in the Army, and then put to death: So jealous were the *Romans* of their Soldiers applying that Time and Labour which they had devoted to the Service of the Publick, in prosecuting either their own, or other Peoples private Affairs.

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\* His quidem quibus indulatum hactenus demonstratur quo binis aut ternis pluribusque mereantur CINGULIS, & seq. (ut dictum est) binis pluribusque MILITIIS. *Cod. lib. 12. Tit. 34. Qui Milit. possunt. Leg. 5.*

CHAP.



W. Hogarth. Sculpsit & fecit

## CHAP. XV.

THE taking away of the *Military Belt* or *Girdle*, spoken of in the foregoing Chapter, was sometimes *Temporary*, and made *Part* only of the Offender's Punishment, who was at the same time disgrac'd some other way, as \* *Calpurnius Piso* punished *Titius*

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\* *Frontinus, lib. Stratagemat. 4. cap. 1.*

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an Horse-Officer, by commanding him to stand barefoot at the Head-Quarters from Morning till Night, with his Gown hanging about his Heels, and to abstain from going to *Baths* and *Entertainments*. Suetonius also mentions the Punishment of *standing before the General's Tent in a slovenly Dress*, wherein they were likewise upon some occasions obliged to *dig in the Trenches*, or *cut Hay*, as † Plutarch tells us, *Lucullus* served those that had run away, making them *throw up a Trench of twelve Foot deep in that Garb*, the whole Army all the while looking upon them. And sometimes they

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† Reversus Lucullus eos qui ceperant fugam de more notavit, ac fossam pedum duodecim discinctos, assistente & spectante exercitu ducere jussit. *Plutarch. in Lucullo, interprete Xylandro.*

were

## *Military Punishments.* 131

were condemned to \* stand before the General's Pavilion in the same Dress, with long Poles in their Hands, or Turfs upon their Heads, for a whole Day, and often bare-footed, that so being exposed in that deformed Condition to the View of the whole Army, their Punishment might be more conspicuous and exemplary.

IVX. L A B D.

\* Pro cætero delictorum genere variis ignominiis afficit, ut stare per totum diem juberet ante Prætorium, interdum truncatos, discinctosque, nonnunquam cum decempidis, vel etiam cespitem portantes. *Sueton. in Vitâ Augusti, cap. 24.*

S 2

CHAP,



## C H A P. XVI.

**A**ccording to the *Roman* Method of *Encamping*, not only every *Legion*, but every *Century* and *Decury*, had a particular Spot of Ground assigned them to pitch their Tents in, which was laid out, in \* proportion to

\* Inde Legionibus locum suum dat & ostendit quam formâ, prout plus minusve Legionum vel auxiliorum fuerit, Cohortes Legionariæ tendant. *Shelius ad Hyginum*, pag. 1. & seq.

the

## *Military Punishments.* 133

the Number of Forces in the Army. But if any were convicted of an Offence, they were *ignominie causâ*, by way of Disgrace obliged to *change* their *Quarters*, and *remove* to *some other Place*, as if they were not worthy to associate with their old Comrades.

\* Thus, the *Soldier* deputed to speak for the rest of the Army that were confined to *Sicily*, for running away at *Canna*, among other Arguments to shew the Hardship of their Case, mentions several Defeats the *Roman* Armies had received, and yet none of them were so severely punished. *They*, says he, *had only their Arms changed for worse, their Rank in the Battel changed,*

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• *Livius, lib. 25.*

and

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*and their Place in the Camp altered : Sometimes Offenders were condemn'd to lye without the Trenches of the Camp upon the bare Ground, exposed to the Insults of the Enemy. Thus \* Livy ; The Companies which had lost their Ensigns, were left on the bare Earth without the Rampiers, destitute of Tents or other Cover. In this manner the Soldiers that were overcome, and forced by † Hanibal to pass under the Yoke, upon their Return to the Army, were commanded by the Consul *Otacilius Crassus* to pitch their Tents on the Outside of the Camp, in order by that defenceless Situation, to inure them*

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\* *Lib. 10.*  
*Frontinus, Stratagemat. lib. 4. cap. 1.*

† *Lib. 2. cap. 7.*

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to Danger, and create in them the Resolution they wanted. To this purpose see *Valerius Maximus* and \* *Tacitus*; where *Corbulo* orders *Pactius* and the rest of the Officers and Soldiers under his Command to *take up their Quarters without the Camp*. But this Disgrace was † Temporary, and continued no longer than the *General* pleased, or the Delinquents had wiped

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\* Rupto Imperio, congressus cum hoste funditur, quod graviter *Corbulo* accepit, increpitumque *Pactium*, & *Præfectos* militesque tendere omnes extra *Vallum* jussit. *Tacit. Annal. 13. cap. 36.*

† Domitius *Corbulo* in *Armeniâ* duas Alas & tres Cohortes quæ ad *Castellum initio* hostibus cesserant, extra *Vallum* jussit tendere donec assiduo labore & prosperis excursionibus redimerent ignominiam. *Frontin. Stratagem. lib. 4 cap. 1.*

Appii Claudii sententia *Senatus* eos qui à *Pyrrho* rege *Epirotarum* capti, & postea remissi erant, omnes extra *Vallum* jussit tendere, donec bina hostium spolia singuli referrent. *Frontin. eod.*

off

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off their Shame by some brave Action  
against the Enemy.

On some occasions they were utterly  
dismember'd from the Army, and  
sent to work in the *Fortifications*, or  
to † *garrison Towns*; and if in Winter-  
Quarters at the time the Offence was  
committed, they were condemned to  
*pass the Season under \* Huts or Tents*  
*in the Field*, and not to build the  
same nearer the Garrison or any other

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† *Custodia castrorum non honoris sed oneris existimat.*  
*Stewechius, ex Diomede Grammatico, ad Veget. lib. 3.*  
*cap. 4.*

\* *P. Valerio Consuli Senatus præcepit exercitum ad*  
*Syrim victum ducere Serinum, ibique castra munire &*  
*hiemem sub tentoriis exigere. Frontin. Stratagemat. lib.*  
*4. cap. 1.*

*Additum eriam virorumque ignominiae est, NE IN*  
**OPPIDIS HYBERNARENT,** neve Hybernâ propius  
ullam urbem decem millibus passuum ædificarent. *Liv.*  
*lib. 35.*

Town,

Town, than ten thousand Paces : Which Punishment some think, was unknown before the *Romans* laid Siege to the City of the *Veii*, the Army having never before that time winter'd in the Field.

Again, Delinquents were, by way of Punishment, ordered to march among the Captives, with the Baggage, as Supernumeraries. Thus \* *Julianus* punished some Horsemen of the *Tertiaci* for deserting the Legions, having first taken from them their Colours, and broke their Spears : For tho' such as were really sick or disabled, might, without Imputation of Infamy, go along with the Baggage ; yet those

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\* *Ammianus Marcellinus*, lib. 25, cap. 1.

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that pretended Disability, to avoid the Fatigue and Duties of honest Soldiers, were dismiss'd the Service, without Pass or Discharge ; by which means they were rendred infamous, the \* Law presuming in that case they were sent away for some dishonourable Action.

It was also a Punishment of Shame to be degraded, which they called *Militie mutatio*. This was, when a Trooper had his Horse taken from him, being compelled to serve on Foot ; or, when a Foot-Soldier from a superior Station was reduced to an inferior : For, as they had several Degrees

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\* Et si sine ignominia mentione missi sunt, nihilominus ignominia missi intelliguntur. *Digest. lib. 49. Tit. 16. De Re Milit. Leg. 13. §. 3.*

of Promotion ; so every one was preferred or degraded , according to his Behaviour : The *lowest* were the *Tyrones* and *Caligati*, who were raw new-listed Centinels , and subject to many arbitrary private Services imposed by their Officers, till time or some brave Exploit redeemed them from that Drudgery, and put them into the List of the *Beneficiarii* or *Munifices*, as they were anciently called. This Degradation was either to the very next step below, or to the bottom of all ; as, suppose a Tribune was to be *gradu dejectus* ; this reduc'd him to be \* *Primicerius*, or First Centurion : If

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\* *Primicerium* vocârunt, primum seu priorem locum tenentem. Divus Augustinus sanctum Stephanum *Primicerium Martyrum* nuncupavit. *Stewechius ad Vegetium*, lib. 2. cap. 21.

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he were to be *datus in deteriorem militiam*, then he was sunk to the Condition of a private Soldier. But when we read of any one simply *gradu dejectus*, it is to be understood of One Degree only: And this is the Disgrace which by \* *Modestinus* is called *Gradu militiae dejici*, and *Gradu pelli*, and by † *Callistratus*, *In deteriorem militiam dari*. From which kind of Degradation, *Militiae mutatio* seems in some measure to differ, by these Passages in the *Digest*; ‡ *Qui in pace deseruit, Eques gradu pellendus est, & Pedes militiam mutat*: For here

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\* *Digest. lib. 49. Tit. 16. De Re Milit. Leg. 3. §. 5. & 9.*

† *Digest. lib. 48. Tit. 3. De Custod. Reorum, Leg. 12.*

‡ *Digest. lib. 49. Tit. 16. De Re Milit. Leg. 5. §. 1.*

the

## Military Punishments. 141

the *Horseman* is to be reduced to *serve on Foot*, and the *Foot-Soldier* to *serve among the Slingers*; of which there are many Examples in \* History. But *Militia rejici* was different from all these. This was, *When a Soldier had his Pay taken from him, and was adjudged incapable of ever serving in the Army*; A † *Punishment assigned for those that wounded their Fellow-Soldiers by slinging of Stones*. In which sense, the Law *Qui aliena arma subripuit, gradu militiae pellendus*

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\* *Valer. Max. lib. 2. cap. 17.*

*Equites quartæ sagittariorum cohortis omnes contru-  
fit ad infimum militiæ gradum. Ammianus Marcellinus,  
lib. 29.*

† *Si quis commilitonem vulneraverit siquidem lapide,  
militiæ rejicitur. Digest. Lib. 49. Tit. 16. De Re Militari,  
Leg. 5. §. 1.  
Digest. cod. Leg. 3. §. 14.*

est,

*est*, is likewise to be taken; where *Pellendum* goes farther than removing the Offender from one degree to another, and signifies the banishing of him for ever out of the Service. To this Punishment of *Degradation*, there was sometimes the Additional Disgrace of having their *Spears* first \* *broken*, or *taken from them*; A Mark, says † *Festus*, of the greatest Infamy, and generally set upon Cowardly Slothful Fellows: For the *Spear* was an Emblem of ‡ *Fortitude*, as well as *Command*; and therefore the

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\* *Ammianus Marcellinus*, lib. 25. cap. 1.

† *Festus in verbo CENSIO.*

‡ *Budens.*

## Military Punishments. 143

Romans added \* Spears to all the Statues of their Emperors and Great Men. This taking away of the Spear, is the *Censio Hastaria* so often met with in the *Roman History*.

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\* G. Cuperus Apoth. Hom. p. 22. & 23.

CHAP:



## C H A P. XVII.

THE *Roman* Soldiers, in the Infancy of that State, had no Pay or Subsistence allow'd them by the Publick; Every Man supported himself in the War, and carried on the Duties of it at his own private Charge, till the Year 350, *ab U. C.* or thereabouts; when the *Senate* decreed, that the *Army* should be *paid* by the

\* *Go-*

## Military Punishments. 145

\* *Government*, that is, the *Infantry* ; For the *Cavalry*, as some think, had no Pay given them till three Years after †. The Quantity, according to *Polybius*, was a third Part of a *Drachma*, or *seven Pence Halfpeny* a day for every Foot-Soldier ; which the same Author in another Place makes equivalent to four *Asses* ; To a *Centurion* twice as much, and to a *Horseman* or *Trooper* a *Drachma* or *Roman Denarius*, then current for Twelve *Asses* ; which Pay continued, probably, in those Proportions till *Julius Cæsar* doubled it

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\* Anno Urbis conditæ 349, decrevit Senatus, ut stipendium Miles de publico acciperet, cum ante id tempus de suo quisque functus eo munere esset. *Liv. lib. 4.*

† See Sir H. Savill's Notes upon *Tacitus*.

V to

## 146 Of the Roman

to the \* *Legions* for ever ; and after him, *Augustus* raised the Foot-Soldiers Pay to *Ten Asses*, and at length to a whole *Denarius*. When this Pay or Stipend was *stopp'd* for any shameful Action, it was called † *Æs Resignatum* ; but when it was *wholly taken away* for a Crime committed, then it was called *Æs dirutum* ; and such as were punished after that manner, were said to be † *Ære diruti*, and *Infrequentes*, as if they had been *respited* upon the *Muster-Rolls* ; in which latter case, the Money returned to the Exchequer.

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\* *Legionibus stipendum in perpetuum duplicavit.*  
*Sueton. in Julio, cap. 26.*

† *Festus in V. Resignatum.*

*VARRO d. Vit: P. R. l. 3. in fragm.*

† *Thus*

## *Military Punishments.* 147

\* Thus, if a Soldier happen'd to be taken by the Enemy, and afterwards came back to the Army, he had no right to demand his Stipend for the time of his Absence, unless it appeared his Captivity was no ways owing to his own ill Conduct: For then it could not be refused. Sometimes *their Pay, by way of Punishment, was reduced to one half*; or, when they had compleated their Term of Military Service, they were *put back so many*

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\* *Stipendia & Donativa temporis quo apud hostes fuisse te dicis, restitui tibi postliminio regresso restitutoque jure non desideras.* *Cod. lib. 12. Tit. 36. De Re Milit. Leg. 1.*

*Sed si ex improviso dum iter quis facit capitur ab hostibus, inspecto vitæ ejus præcedentis actu venia ei dabitur.* *Dig. lib. 49. Tit. 16. De Re Militari, Leg. 3. §. 12.*

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*Tears, and forced to serve them over again †; as the Senate punished the Remains of the Army after the Battle of Cannæ.*

Over and above their Pay, they had \* *Wheat distributed among them*, and that long before they began to receive Wages: Sometimes they had *Bacon, Pork, Salt and Pulse* given them. This Allowance of *Wheat, &c.* was for a Month, or a certain Number of Days, according to the time the Expedition was like to continue. Thus † *Livy*: *The Army was brought back to Rome,*

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† Mitterentur in Siciliam ad Cannensis exercitus reliquias cui militum generi non priusquam pulsus Italiam hostis finitum tempus stipendiorum erat. *Liv. lib. 33.*

\* *Schelius ad Hyginum & Polybium, cap. 7.*

† Exercitum Romam deductum, stipendum & trium mensium frumentum accepisse. *Liv. lib. 8. in princip. having*

## Military Punishments. 149

having received a Years Pay, and Wheat for three Months. But such as were convicted of Crimes, or had failed in their Duty, instead of Wheat, had \* Barley given them, as if they were fitter to be reckoned among Beasts than Men ; In which manner *Marcellus* order'd those Cohorts to be punished, that had lost their Ensigns in the Battel with *Hannibal* near *Canusium*. And *Augustus* (as hath been already observed) set this Mark of Disgrace upon some Legions that had given ground to the Enemy. † *Vegetius* says, it was a

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\* *Livius, lib. 27.*

*Suetonius, cap. 24. in Aug.*

† Ita autem severè apud majores exercitii disciplina servata est, ut & doctores armorum duplicibus remunerantur annonis & milites qui parùm in illâ prolusione profecerant, pro frumento hordeum cogerentur accipere.  
*Veget. lib. 1. cap. 13.*

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Punishment inflicted upon such as neglected, or did not improve in their Military Exercises. It was also appointed for those that escaped with Life upon Decimation.

This *stipendii privatio*, *stopping* or *suspending* of Pay, was different from the Punishment called *Pœna pecuniaria*, or, as it is frequently and plainly in the *Theodosian Code*, *Condemnatio*, whereby the Offenders did not only lose all their Pay, but *whatever they were worth besides*. There is a Law in that Code, which enacts, \* *That if a Soldier be twice convicted of stragling about the Countrey, or absenting without*

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\* *Cod. Theod. De Re Militari, Leg. 21.*

leave

## Military Punishments. 151

leave from the Company he belongs to, be shall forfeit all he hath, \* In the Free State, such as refused to appear at the General Muster, were punish'd with the Loss of all their Goods. But this *Mulct* or *Pecuniary Punishment* grew more Common in latter Times, as appears by several of the Emperours *Constitutions*. There is One against Petitioners for Leave to hold Two Employments, † condemning them to pay ten Pounds of Gold; and Another in favour of the Officers appointed to gather Corn and Money from the Provinces for

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\* Eos qui non parebant, in bonis damno afficiebant.  
*Dion. Halicarn. lib. 8. interprete Lipsio.*

† *L. 5. Cod. Qui milit. poss.*

the

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the Use of the Army, whereby *such as distract or hinder them in their Collections, are condemned to pay a hundred Pounds of Gold.*

To conclude : These were the most usual *Roman Military Punishments*, for which we have any good Historical Authority.

\* *Stewechius* indeed, puts the *Refusal of Burial* in the Catalogue ; because those Soldiers who rebelled and seiz'd upon † *Rhegium*, were, after the taking of that Place, sentenced to death, and Orders given that no Man should bury or bewail them. But this uncommon Resentment was owing to the extraordinary nature of their

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\* *Ad Veget. lib. 3. cap. 4.*

† *Valer. Max. lib. 2. cap. 7.*

Of-

Offence, They suffered as *Rebels* and *Traytors*, not as *Soldiers*, whose Bodies after undergoing the Severity of the Law, were never refused *Burial*. \* *Herman Hugo* likewise mentions the *Pugillarium Traditionem*, as a *Roman Military Punishment* in the *Horse-Service*. This was, the *Delivery* of a *Pocket-Book* or *Paper*, wherein the Person's Faults were set down, to let him see his Actions were taken notice of and disliked by his *Superiours*. *Sichterman* blames *Hugo* for calling this a *Military Punishment*, and says, he misunderstands *Suetonius*'s Words, and that *Augustus*, who took this method to admonish the *Roman Knights*, did not apply it to them as *military Men*, but as *Brokers* and *Usurers*. But if *Suetonius* be allow'd

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\* *De Milit. Equestr. lib. 5.*

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to speak for himself, it will appear, not *Hugo*, but *Sichterman* is mistaken in this Particular. The Author's Words are, \* *Lenissimum genus admonitionis fuit traditio coram pugillarium.* And then he goes on, *Notavitque aliquos quod pecunias, &c.* From whence 'tis plain, the *Traditio pugillarium* and the *Notatio* were distinct Animadversions, and that the latter only related to those who were accused of borrowing Money at a low rate, and lending out the same at exorbitant Interest : So that both these Authors seem to be in an Error ; *Hugo*, in applying the Emperours *Notatio* to the *Roman* Knights in their Military Capacity, and † *Sichterman*, in applying the *Pugillarium traditio* to them as Usurers. Whether

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\* *In Vita Aug. cap. 39.*

† *Dissert. de Pæn. Milit. ad fin.*

either,

## *Military Punishments.* 155

either, considering all things, can, be properly called a *Military Punishment*, is left to the Determination of better Judges. \* *Montfaulcon* says, that *striking their Faces with Stones* was likewise a *Military Punishment* in use among the *Romans*; but does not tell us his Authority. And † *Livy* relates, that *Gracchus* made some of his Soldiers who had not behaved themselves with the same Bravery as the rest of the Army, take an Oath, *that they would not eat or drink in any Posture but standing, as long as they should continue in the Service.* But this one Example, in which there appears to be more of Humour than Reason, can't be thought sufficient to place it among the *Military Punishments.* I forbear mentioning several others of the same kind, that I may not seem rather to perplex than illustrate the Subject of this Treatise.

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\* *Antiq. lib. 4.*      † *Lib. 24.*

771 *Am. J. of Entomol.*  
51, no. 2, 1962, pp. 139-151.  
A number of new species of the  
genus *Leptothrix* (Diptera, Platystomatidae) are described and